FILED
NOV 8 - 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

(17) (25)

NOS. 05-1589, 05-1657

IN THE SUPREME COURT OF THE UNITED STATES

GARY DAVENPORT, ET AL.,

Petitioners,

v.

WASHINGTON EDUCATION ASSOCIATION,

Respondent.

WASHINGTON,

Petitioner,

v.

WASHINGTON EDUCATION ASSOCIATION,

Respondent.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF WASHINGTON

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JUNE 13, 2006 / JUNE 14, 2006
CERTIORARI GRANTED SEPTEMBER 26, 2006

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF THURSTON

GARY DAVENPORT, MARTHA LOFGREN, WALT PIERSON, SUSANNAH SIMPSON, AND TRACY WOLCOTT, Plaintiffs, individually and on behalf of all other nonmembers similarly situated vs. WASHINGTON EDUCATION ASSOCIATION, Defendant.	No. 01-2-00519-4

AMENDED COMPLAINT - CLASS ACTION

INTRODUCTION

This is a class action seeking damages to redress the violations of the class members' rights under RCW 42.17.760. Plaintiff class members are not members of Defendant Washington Education Association (WEA), but are represented by Defendant for collective bargaining purposes and pay compulsory agency shop fees to the WEA. Defendant WEA has violated Plaintiff class members' rights, willfully interfered with their paychecks, and breached its fiduciary duty by using Plaintiff class members' fees to make political contributions and expenditures without their affirmative authorization, all in violation of RCW 42.17.760.

PARTIES

1. Gary Davenport was employed in the public schools and paid an agency shop fee in an amount equal to union dues from September 1998 to March 2000 to Defendant WEA and its affiliates.

2. Martha Lofgren has been employed in the public schools and has paid an agency shop fee in an amount equal to union dues prior to and including from September 1996 to the present to Defendant WEA and its affiliates.

3. Walt Pierson has been employed in the public schools and has paid an agency shop fee in an amount equal to union dues prior to and including from September 1995 through August 2000 to Defendant WEA and its affiliates.

4. Susannah Simpson was employed in the public schools and paid an agency shop fee in an amount equal to union dues from September 1996 to December 1999 to Defendant WEA and its affiliates.

5. Tracy Wolcott has been employed in the public schools and paid an agency shop fee in an amount equal to union dues prior to and including from September 1995 to early 2000 to Defendant WEA and its affiliates.

6. Plaintiffs, who are suing on their own behalf and on behalf of all others similarly situated, are nonmembers of Defendant WEA and for the years indicated, paid mandatory agency fees in amounts equivalent to union dues, without receiving refunds, to Defendant WEA, which used their fees to influence elections and to support political committees without their authorization.

7. Defendant Washington Education Association is a labor organization representing public school employees in the State of Washington, including plaintiffs, for purposes of collective bargaining. Defendant

is a non-profit corporation organized under the laws of Washington State with its principal office is in Federal Way, Washington, and additional offices in Olympia and Spokane, Washington.

STATEMENT OF LAW

8. Pursuant to RCW 41.59.100 a public employer and labor organization may include a security provision in the collective bargaining agreement which requires agency fee payers to pay a fee equivalent to full union dues.

9. RCW 42.17.760 prohibits a labor organization from using the funds of agency fee payers for contributions or expenditures to influence an election or operate a political committee, unless affirmatively authorized by the agency fee payer. Thus, only those agency fee payers who authorize the use of their fees for the stated political purposes, or "opt-in," pay full union dues.

10. In effect, RCW 42.17.760 reduces the amount of the fee labor organizations may require of agency fee payers under RCW 41.59.100, unless they "opt-in" by affirmatively authorizing the use of their funds for elections and political committees.

CLASS ACTION ALLEGATIONS

11. This is a class action brought by Plaintiffs on their own behalf and on behalf of all other nonmembers similarly situated pursuant to CR 23. The class Plaintiffs seek to represent consists of all public school employees since September 1995 to the present and who are or were nonmembers paying an agency shop fee to Defendant WEA without receiving a reduction or refund for the amount the union spent on political contributions and expenditures, without their authorization.

12. On information and belief, the number of nonmembers in the class has ranged from 2,500 in the

1995-96 school year to 4,200 in the 2000-01 school year. On information and belief the actual number of individuals of this class is higher than 4,200 due to the retirement of nonmembers during the last five years. In 1998, Defendant WEA disclosed to the federal district court that it represented 8,789 nonmembers during the period 1994-98. These persons are therefore so numerous that individual joinder would be impracticable.

13. There are questions of law and fact common to all members of the class, such as the amount of Plaintiff class members' agency fees Defendant WEA used for contributions or expenditures to influence an election or operate a political committee; whether Plaintiff class members have the right to reimbursement for such contributions and expenditures; whether Plaintiff class members are entitled to damages for Defendant's unauthorized use of their fees for political contributions or expenditures; and the amount to be returned to Plaintiff class members.

14. Plaintiffs' individual claims are typical of other members of the Plaintiff class, who have been subject to the same deprivation of their rights through Defendant's use of their agency fees for political purposes without their authorization.

15. Plaintiffs can adequately represent the interests of other members of the class. Plaintiffs have no interest antagonistic to nonmember agency fee payers whose fees have been used for political contributions or expenditures without their consent. Plaintiffs' attorneys are experienced in representing the interests of nonmember employees in litigation, including class actions, involving similar issues.

16. Defendant WEA is prohibited under RCW 42.17.760 from collecting and expending the fees of each class member to influence an election or operate a political committee without their consent. Thus, the

prosecution of separate actions would create a risk of inconsistent or varying adjudications establishing incompatible standards of conduct for the Defendant WEA.

17. The questions of law and fact common to the members of Plaintiff class predominate over any questions affecting only individual members. The important and controlling issues in this action, delineated above (paragraph 13), are common to all members of the class. Any factual distinctions among class members, if they exist, are peripheral to these core questions.

18. A class action is superior to other available methods of fair and efficient adjudication of the controversy, as the Plaintiff class members have been deprived of the same rights through the Defendant WEA's use of their agency fees for political purposes without authorization. Separate actions by individual class members to vindicate their rights are not a viable alternative due to the limited amount of money involved in any individual claim. Moreover, the large number of claimants would result in a multiplicity of actions and a substantial waste of judicial resources.

19. By making contributions and expenditures to influence elections or operate a political committee with monies collected from the Plaintiff class, without their consent, Defendant has acted on grounds generally applicable to the Plaintiff class as a whole.

STATEMENT OF FACTS

20. WEA and its affiliated labor organizations are paid dues from members, and agency fees from nonmembers, through an automatic payroll deduction system administered by public school employers. Based on instructions from the WEA, public school employers deduct dues and their equivalent in fees and pay them in monthly lump sums to an intermediary, Blue Cross of Washington or the WEA's local association affiliate, which

in turn transmits to the WEA its share. WEA deposits the monthly lump sums into its general treasury.

21. Pursuant to RCW 41.59.100 and contractual agreements between Defendant and Plaintiffs' employers, Plaintiff class members are charged mandatory agency shop fees as a condition of employment.

22. WEA expends funds from its general treasury for all of its program activities, including for contributions and expenditures to influence elections and to operate its own political action committee, WEA-PAC.

23. From year to year, WEA concedes approximately 25% of its total expenditures are for political contributions, to further its ideology, and for other expenditures that under federal constitutional law may not be charged nonmembers who timely object to supporting activities unrelated to WEA's representational functions. If a nonmember does not timely object she pays the equivalent of full union dues.

24. Under federal law, WEA is required to provide to all agency fee payers a detailed disclosure of the use made of the WEA's expenditures, verified by an independent auditor. This information is commonly known as the "Hudson Notice," named after the case *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986). In WEA's annual Hudson Notice, it discloses, *inter alia*, that it uses a portion of the agency shop fee for "activities to influence an election" and "[o]peration of political committees".

25. The Hudson Notice also sets forth the following options to agency fee payers:

You have three options: (1) you may pay the full amount equal to dues paid by members; (2) you may object to use of your agency fee for nonchargeable activities but accept the Association's determination of the amount of the fee that is chargeable as is set forth in this letter; or (3) you may choose to object to the use of

your agency fee for nonchargeable activities and challenge the Association's calculation of the amounts that are chargeable and nonchargeable.

26. Defendant WEA's Hudson Notice misrepresents the legal options available to agency fee payers. Under RCW 42.17.760 an agency fee may not be used to influence an election or operate a political committee unless the nonmember specifically authorizes such use. However, WEA misleads nonmembers to believe they must object annually by an arbitrary deadline set by the WEA as a condition for receiving a reduction in the amount WEA spends to influence an election and operate a political committee.

27. On information and belief, WEA reported to the Public Disclosure Commission contributions and expenditures to influence elections and support political committees from the general treasury as follows:

1996:	$1,000,417
1997:	$275,744
1998:	$266,784
1999:	$407,776
2000:	$1,089,380

28. WEA did not obtain the affirmative authorization required by RCW 42.17.760 prior to using the agency fees of Plaintiff class members in any of these years.

29. WEA's actual political contributions and expenditures from year to year exceed its reported contributions and expenditures. For example, in 1997 the Public Disclosure Commission (PDC) brought an enforcement action against the WEA for failing to fully report its political contributions and expenditures during the 1996 election cycle. As part of a settlement, WEA

agreed to pay sanctions and reimburse public school employees $425,000.

30. On September 25, 2000, Defendant WEA, through its legal counsel, signed a Stipulation of Facts, Violations and Penalty, *In the Matter of the Enforcement Action Against the Washington Education Association*, PDC Case No. 01-002 (Public Disclosure Commission, 2000). A true and correct copy of this Stipulation is attached hereto. Therein, Defendant admitted that it had committed multiple violations of RCW 42.17.760. The PDC referred the matter to the Washington State Attorney General under RCW 42.17.395.

31. On behalf of the PDC, the Attorney General commenced an enforcement action in Thurston County Superior Court, No. 00-2-01837-9. The Attorney General sought penalties, injunctive relief and attorneys fees and costs. It did not seek the damages sustained by agency fee payers arising out of the WEA's violation of RCW 42.17.760. After a bench trial to the Honorable Gary Tabor in May 2001, Judge Tabor awarded the State $200,000 in penalties and doubled the amount to $400,000 based on the WEA's willful violation of the laws. The court indicated in its July 31, 2000 written decision that it will rule on injunctive relief and award the PDC its attorney fees and costs. (A copy of the July 31, 2000 Letter Opinion is attached)

FIRST CAUSE OF ACTION – VIOLATION OF RCW 42.17.760

32. Defendant WEA deprived Plaintiff class members of their rights secured by RCW 42.17.760 by using their agency fees for contributions and expenditures to influence elections or support political committees without their affirmative authorization. Plaintiff class members are entitled to damages and prejudgment interest in an amount to be established at trial.

SECOND CAUSE OF ACTION – CONVERSION

33. Plaintiff class members reallege paragraphs 1 through 29 as if fully set forth herein.

34. Defendant WEA willfully interfered with the paychecks of Plaintiff class members, without legal justification, and deprived them of their own funds in an amount that corresponds to Defendant WEA's contributions and expenditures to influence elections and support political committees. Plaintiff class members are entitled to damages and prejudgment interest in an amount to be established at trial.

THIRD CAUSE OF ACTION – BREACH OF FIDUCIARY DUTY

34.[sic] Plaintiff class members reallege paragraphs 1 through 29 as if fully set forth herein.

35. Defendant WEA breached its common law fiduciary duty to Plaintiff class members by misusing their funds without their authorization to influence elections and support political contributions. Plaintiff class members are entitled to damages and prejudgment interest in an amount to be established at trial.

FOURTH CAUSE OF ACTION – FRAUDULENT CONCEALMENT

36. Plaintiff class members reallege paragraphs 1 through 29 as if fully set forth herein.

37. Defendant WEA owed Plaintiff class members the affirmative duty to disclose all material facts relating to WEA's use of their agency shop fees and breached that duty. Plaintiff class members are entitled to damages and prejudgment interest in an amount to be established at trial.

PRAYER FOR RELIEF

Plaintiff class members pray for the following relief:

1. Judgment declaring that this action be maintained as a Class Action under Court Rule 23;

2. Judgment against Defendant WEA on each of the causes of action in an amount to be established at trial;

3. For an award of Plaintiff class members' attorneys fees and costs; and

4. For other relief deemed just and equitable by the court.

DATED this *26th* day of September, 2001

[Signature block omitted in printing.]

[Caption omitted in printing.]

BEFORE THE
PUBLIC DISCLOSURE COMMISSION
STATE OF WASHINGTON

STIPULATION OF FACTS, VIOLATIONS AND RECOMMENDATIONS

September 25, 2000

Case No. 01-002

The Washington Education Association (Respondent) and Public Disclosure Commission Enforcement Staff (Staff) agree to the following:

1. The Respondent is a labor organization.

2. The Respondent deposited into its general fund agency fee money from 4,194 individuals.

3. The Respondent's general fund money was used to make contributions and expenditures to influence an election and to operate a political committee.

4. The Respondent did not have affirmative authorization from agency fee payers to use their money for these purposes.

5. The Respondent contends that the number of 4,194 is over-inclusive in that it includes persons who were members of WEA and did not pay agency fees.

6. Staff contends that when Respondent submitted documents in response to a subpoena, a redacted list of 4,407 agency fee payers was presented. Names of the agency fee payers were redacted and replaced with a unique identification number for each agency fee payer. Of these, 4,407 individuals, 213 either filed objections or challenges to their funds being used for

'non-chargeable' expenditures and received a refund of the portion of their fees being used for non-chargeable purposes. The funds from the remaining 4,194 individuals were then transferred from the agency fee escrow account to WEA's general operating fund.

7. Staff were unable to determine the amount of agency fees used to make the contributions and expenditures referred to in paragraph 3 because WEA's final revenue figures for FY 2000 (September 1, 1999 through August 31, 2000) are not yet available.

Violation

Respondent and Staff agree that Respondent committed multiple violations of RCW 42.17.760.

Recommendation

Staff recommends that this matter be referred to the Office of the Attorney General for further review pursuant to RCW 42.17.395(3). Respondent does not oppose the recommend-ation by staff.

Respectfully submitted this 25th day of September, 2000.

/s/	/s/
Vicki Rippie,	Harriet Strasberg, Counsel
Executive Director PDC	WEA

[Caption omitted in printing]

THURSTON COUNTY SUPERIOR COURT

Letter Opinion

July 31, 2001

Dear Counsel:

On May 14-18th, this court presided over a trial in the above-entitled case and took the matter under advisement following closing arguments by the parties. Now, having considered the testimony presented at trial, the briefs and arguments of the parties and the applicable statutes and case authority, this court rules by way of this letter opinion.

BACKGROUND

The trial in this matter focused upon facts surrounding the collection of fees by the Washington Education Association (WEA) from non-union members called "fee payers" for a five year period (1995/1996 through 1999/2000). These "fee payers" pay fees equal to the Union Dues paid by union members[1] unless they raise an objection. Those who object receive a refund based upon a formula that accounts for the ratio of "chargeable" to "nonchargeable" expenses.[2] The Public Disclosure Commission (PDC), plaintiff in this matter, claimed that portions of these fees were used for 'political purposes" in violation of RCW 42.17.760[3], that civil penalties[4] and

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[1] These fees do not include the amount union members pay as "Community Outreach Project" (COP) assessments. COP funds were not a part of this lawsuit.

[2] This process is called the *Hudson* process, *see Chicago Teachers Union v. Hudson*, 475 U.S. 292, 106 S. Ct. 2641 (19898) and distinguishes expenses that are "chargeable" to collective bargaining purposes from those which are not.

[3] RCW 41.27.760 Agency shop fees as contributions. A labor organization may not use agency shop fees paid by an individual who

costs should be imposed by this court, and that this court should consider whether any violations that might be found were "intentional" which would allow the court to "treble" any penalties and costs.[5]

The parties had previously agreed that the WEA had committed multiple violations of RCW 42.17.760.[6] The agreement itself did not, however, specify what time period it covered. This court ruled, on March 23rd, 2001, at a pre-trial hearing, that the agreement time period would be the 1999-2000 school year and that alleged violations for the previous four years would be considered at trial. This court also ruled on summary judgment that RCW 42.17.760 is constitutional and requires an affirmative authorization from agency fee payers (as opposed to a passive failure to object) before the WEA may collect or use such fees for "political purposes".[7]

ISSUES

The court will rule on the following issues as a result of the evidence produced at trial and the positions of the parties:

1. Did the WEA *use* agency fees in fiscal (school) years 1995-96, 1996-97, 1997-98, and 1998-1999 for purposes forbidden in RCW 42.17.760?[8]

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is not a member of the organization to make contributions or expenditures to influence an election or to operate a political committee, unless affirmatively authorized by the individual.

[4] RCW 42.17.390(3)

[5] RCW 42.17.400(5)

[6] Trial Exhibit 1, dated September 25, 2000.

[7] This court ruled orally on May 4, 2001 and the written order was entered May 15, 2001.

[8] Violations for 1999-2000 have been admitted by the WEA.

2. What is the appropriate amount of civil penalty to be imposed according to RCW 42.17.390(3)?

3. Were WEA's violations "intentional" and if so should penalties and costs be increased up to a treble amount as punitive damages under RCW 42.17.400(5)?

4. What other relief, if any should this court impose?

FINDINGS

I. THE WEA HAS USED AGENCY FEES IN VIOLATION OF RCW 46.17.760

The evidence produced at trial has convinced this court that the WEA did, in fact, *use* portions of the agency shop fees they received for "political purposes" that is, ". . . to make contributions or expenditures to influence an election or to operate a political committee, . . ." as prohibited by RCW 42.17.760. While this court understands the position of the WEA to the effect that they had sufficient reserves each year to more than offset the fee payor amounts in question, and that amounts involved are quire small percentage wise (both the amounts received from agency fee payers and amounts expended for political purposes), this court disagrees with that logic. Any distinction between "collecting" and agency fee (on the revenue side) and "expending" monies for a particular purpose (on the expense side) are forever obscured when the funds collected are "commingled" into the general fund.

It is clear to this court that the WEA position was that agency fees were placed into the general fund and were spent each year as the WEA determined appropriate.[9] Moreover, the WEA has further argued

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[9] That is, unless a agency fee-payer affirmatively objected to the use of his or her funds for purposes other than collective bargaining. It that case a portion of the fees would be returned to the fee-payer under the *Hudson* process.

that even if the agency fees could have been separated, they would come back into the general fund at the end of the year as "surplus" funds. This reasoning is erroneous. This court could cite numerous examples of the unfairness of such a position, but in the interest of time and space will note only two:

First, the logical extension of such reasoning is that the WEA would, as a result of such fees, have more money to spend than if they had not collected them. If those funds could be construed to be spent only for non-political purposes, the WEA would still, obviously, have more monies to spend from other funds for political purposes. This is a clear-cut *use* of the total funds available for the given purposes in proportion to the source of the funds. While the percentage might be small, the agency fees are nevertheless used as a part of the over-all total expenditures, some of which were for prohibited purposes.

Second, if agency fee amounts are simply held, and not spent (part of the unexpended funds which existed each year) by the end of the fiscal year, WEA's position that they then lose their character and are simple a part of the surplus that can be carried over, would obviously prompt a practice of just waiting a year and spending the money without restrictions. This flies in the face of the underlying problem that this court has previously identified – that of *collecting* fees from agency fee payers without first gaining their *affirmative* authorization to do so. There would be no incentive to do so if the court were only to consider what was *spent* in the year it was collected.

In short, the WEA violates RCW 42.17.760 when it collects agency fees and then spends them for prohibited purposes in ratio to the total agency fees and dues

collected[10] *without affirmative authorization.* While the amount spent for "political purposes" will be a component of the formula for assessing what portion of the agency fees are to be credited or returned to the agency fee payers, that amount need not be quantified for this court to rule as its initial finding that such fees are, indeed, being spent in violation of the statute. The issue of how the amount of political expenditures can be factored into a determination of the correct proportional adjustment to agency fees is best left to the "Other Court Remedies" discussion below.

II. THIS COURT ASSESSES A CIVIL PENALTY OF $200,000 AGAINST THE WEA.

Having found that the WEA violated the law as set forth in RCW 42.17.760 by using agency fees for political purposes without affirmative authorization as set forth above, the court must next address appropriate civil penalties, if any, under RCW 42.17.390(3).[11] A fine of up to $10,000 for each violation of the statute presents a broad number of options to this court. This court holds, first of all, that a civil penalty is appropriate in the present case aside from any amount of restitution or refund owed. While the WEA, during the 5 year period at issue, has collected and has had the benefit of monies it was not entitled to under the statute, this court is not addressing what, if any monies or damages any individual or group of fee payers would be entitled to.[12] Instead, this

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[10] Again, COP assessments or dues are not included.

[11] (3) Any person who violates any of the provisions of this chapter may be subject to a civil penalty of not more than ten thousand dollars for each such violation.

[12] The court notes that this action was filed by the Office of the Attorney General of the State of Washington under RCW 42.17.400(1) and is on behalf of the State of Washington as distinguished from individual agency fee payers. No fee payer sought to intervene in this matter although several individuals did ask for permission to submit amicus pleadings, which this court denied.

court notes that a penalty amount is appropriate to preserve the integrity of our system and promote public confidence: those violating statutes will be held to answer.

This court accepts, in principle, the arguments submitted by the Plaintiff herein. First of all, there cannot be an absolute determination of the amounts involved[13] either those lost to fee payers or gained by the WEA (costs avoided by not complying with the affirmative authorization requirement). Secondly, the total number or even the identity of individuals involved cannot be determined since there were constant changes over the five-year period; nevertheless a penalty could be assessed as to each individual found to have been an agency fee payer if the court desired. Plaintiff proposed that the court consider a total of 8,000 individuals, (although the actual figure appears to be almost double that[14]), and that a penalty of $25 be assessed for each of those individuals for a total of $200,000. This court accepts that proposal as being fair to both sides under the present facts.[15]

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[13] *See State v. WWJ Corp.* 138 Wn.2d 595, 980 P.2d 1257 (1999).

[14] Exhibit 1 acknowledges that there were 4,194 agency fee payers in 1999/2000. The WEA argues that this number was over inclusive, so that Plaintiff has reduced that number to 3,200 per year; a total of 16,000 over five years. Plaintiff then cuts that figure in half (8,000) and asks for a penalty of $25 for each. That results in the requested $200,000 figure.

[15] Even if the court were to accept Ms. Lonnquist's argument that the WEA stipulated to only 4 violations for the fiscal year 1999 (4 times each year that moneys were not segregated), 4 violations in each of 5 years would constitute 20 violations; if assessed at $10,000 each that would still total $200,000.

III. THIS COURT FINDS AN INTENTIONAL VIOLATION BY THE WEA IN FAILING TO FOLLOW THE LAW AND DOUBLES THE AMOUNT OF DAMAGES AS A PUNITIVE SANCTION. THE COURT CHOOSES NOT TO DOUBLE COSTS.

This issue has been the most difficult trial issue for this court. I have listened carefully to the testimony of the witnesses and concede that there was ambivalence and a lack of official direction as to the correct interpretation of the "affirmative authorization" language by leaders for both the WEA and the PDC. On the other hand, it is clear to this court that much of that indecision on the part of the WEA was a desire to not have to get involved in a laborious process to secure such affirmative authorizations if they didn't have to. Despite a clear communication from the Washington State Labor Council in 1997,[16] the WEA chose to take the easy road. This court will also observe that even when it became completely apparent that this obvious requirement had been ignored and the WEA stipulated to "multiple violations" in September of 2000[17] the WEA could still not bring itself to acknowledge the obvious state of affairs and attempt to mitigate and negotiate the outcome of this dispute.

The PDC clearly did not move decisively to enforce this statute either; that is unfortunate. The PDC acted only when spurred to do so by citizen complaints. Any excuses that the PDC doesn't have to make regulations to explain statute compliance procedures serve no real purpose at this trial other than to further polarize the parties. The parties here are going to be required to work together in the future to accomplish what needs to be

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[16] Exhibit 94 at trial.

[17] Exhibit 1

done in this case; this court would hope that previous communication problems will not be repeated. The fact remains however, a violation of statute is still a violation; for example a person who is speeding down a roadway does not have the right to speed just because a police officer does not make a traffic stop when the opportunity arises. The WEA argument that if the PDC had told them what was expected, they would have immediately complied, is not compelling to this court. The WEA clearly understood the PDC position leading to this trial and certainly did not immediately agree.

RCW 42.17.400(5) gives this court the discretion to treble the amount of judgment as punitive damages.[18] For the reasons discussed above, I find that the WEA "intentionally" chose not to comply with the clear language of the statute; this court imposes a punitive sanction of $400,000 (double the $200,000 civil penalty assessed above). The court will also award the Plaintiff an appropriate amount of costs of investigation and trial, including attorney's fees (to be determined upon further information from the plaintiff and further hearings, if required). I will not, however double (or treble) these costs and fees for the reasons discussed above. The punitive civil penalty is to punish the illegal actions of the WEA and is not intended as a reward or bonus to the PDC.

---

[18] (5) In any action brought under this section, the court may award to the state all costs of investigation and trial, including a reasonable attorney's fee to be fixed by the court. If the violation is found to have been intentional, the amount of the judgment, which shall for this purpose include the costs, may be trebled as punitive damages. . . .

IV. THIS COURT DIRECTS THE WEA TO DEVELOP PROCEDURES TO IMPLE-MENT THE AFFIRMATIVE AUTHORI-ZATION REQUIREMENTS OF RCW 41.27.760

This court must not only concern itself with the past violations of the statute but must also insure that the statute is followed in the future. During the course of trial and argument, it has been suggested by the WEA that this is an extremely difficult task and that other issues make compliance nearly impossible. The WEA argues that they cannot determine, in advance, the amounts that they will spend in a given year so that agency fee payers will not be charged the proportional amount. The PDC argues that amounts determined to be "nonchargeable" under the *Hudson* analysis don't account for other amounts that are "political". The PDC has stated that it is not seeking to have the WEA seek repeated affirmative authorizations and does not ask for a separate political fund to be set up. This court has already ruled that an affirmative authorization does not necessarily have to be in writing. These issues, and others, do appear to be substantial in number and in substance. This court does not suggest that it has a sufficient understanding of either of the parties positions to fashion a remedy of its own at this point. On the other hand, this court is convinced that a procedure can be developed to assure compliance with the statute. Consequently, the court will give the WEA a period of 90 days from today's date to report back to the court with a proposal to assure compliance.

The PDC, in the court's opinion must also bear some responsibility in this task. It must provide the WEA assistance and feedback as the procedures are contemplated. This court expects that the parties will discuss and negotiate, and that consensus will be reached on as many details as possible. If the parties cannot

agree, each side should provide suggested solutions for this court's consideration in arriving at a final procedure.

At the time of trial, the parties agreed to bifurcate the trial as to certain issues concerning specific expenditures or dollar amounts. This court is not prepared to rule at this time as to the nature of certain contested expenditures which may or may not be "political". Likewise, as previously noted, this court declines to rule on issues involving repayment or restitution amounts owed to individual fee payers.

There are no other issues, so far as the court is aware, that are ripe for this court's decision today.

CONCLUSION

This court today holds that the WEA has violated RCW 46.17.760 by using agency shop fees without affirmative authorization. The Court assesses a civil penalty of $200,000 against the WEA, finds that the violation was intentional, and doubles the penalty to $400,000 as a punitive sanction. The court also orders that appropriate costs for investigation and trial and attorney's fees be paid by the respondent; these amounts are not doubled and shall be specifically determined after further information and argument, if necessary. Finally, this court directs the WEA to develop, within 90 days, a plan to comply with the affirmative authorization requirements of the statute in the future. Because the Petitioner is the prevailing party, the PDC is directed to prepare and present an order for filing that reflects this court's decision as set forth in this letter opinion.

Sincerely,

//s//

Gary R. Tabor, Judge

Judge Daniel Berschauer
Hearing date: November 2, 2001

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

GARY DAVENPORT, MARTHA LOFGREN, WALT PIERSON, SUSANNAH SIMPSON, And TRACY WOLCOTT, Plaintiffs, v. WASHINGTON EDUCATION ASSOCIATION, Defendant.	No. 01-2-00519-4 DECLARATION OF AIMEE S. IVERSON

AIMEE S. IVERSON, on oath declares as follows:

1. I am one of the attorneys for the Defendant. I make this declaration based on my personal knowledge, and I am competent to testify as to the matters stated herein.

2. Attached hereto as Exhibit A is a true and correct copy of the 2000-01 WEA Membership Enrollment Guide that was produced to Plaintiffs in discovery, bearing identification numbers "WEA-DAV 2343-2408".

* * * * *

I have read the foregoing, believe it to be correct, and certify and declare the same under penalty of perjury of the laws of the State of Washington.

Signed at Federal Way, Washington this 25th day of October, 2001.

//s//
Aimee S. Iverson
WSBA #28610

[COVER]

2000-01

Membership Enrollment Guide

WEA Washington Education Association

Exhibit A

[WEA-DAV 2343]

[INSIDE COVER]

2000-2001 WEA Membership Enrollment Guide

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(Alpha listing of local associations)

Payroll Office Responsibilities

The primary responsibility of the payroll office is to make monthly deductions of authorized membership dues and contributions as authorized under state law and as provided in bargaining contracts with employee groups. Payroll offices are authorized under collective bargaining statutes to make payroll deductions of association dues and insurance premiums when authorized by the written consent of an employee (RCW 28A.405.400, 28B.52.045, 41.04.020, 41.56.110, 41.59.060).

It is important that the payroll officer work closely with a representative of the local association in administering dues deductions. Questions on the APA billing may be directed to the WEA/APA office at Premera Blue Cross. Membership questions may be directed to the WEA membership staff.

Changes in dues amounts each year are initiated by the WEA office, working in conjunction with Premera Blue Cross for continuing members on the October 1 billing, which is for the September payroll.

Members may be added to or deleted from the APA billing by the payroll office as directed by the local association. Terminated employees should be removed from the billing at the date of termination. **If termination occurs prior to the end of the school year, the balance of annual dues should be deducted from the last paycheck.**

In school districts where an agency fee clause is part of the bargaining agreement, all new employees should begin paying dues immediately as agency fee payers, pending a possible subsequent change in status to

member once a signed membership enrollment form is provided.

The payroll office will receive a copy of the membership enrollment form as an authorization for deductions. This form, along with the APA dues distribution form provided by the local association should be filed for reference.

Continuing members will have dues deducted:

- 12 months – September-August (October 1 - September 1 APA billing dates)

OR

- 10 months – September-June (October 1 - July 1 APA billing dates)

Do not deduct NEA FCPE or WEA-PAC for Agency Shop fee payers, Community College, Technical College and 4-year University members.

* Note (from page 10):

If signed enrollment form is not received by WEA for a new employee and his or her name appears on the membership dues billing, that person will be considered an Agency Fee Payer. (See more information on Agency Fee on page 26.)

Enrollment Calendar

August: Distribution of Materials

- Membership materials are mailed directly from WEA to local association Presidents.
- Membership materials are then distributed to building representatives.

September: Sign-up Time

- WEA must receive a signed enrollment form for each member if services are to be provided. Use the multi-part enrollment form to enroll new APA and cash members. Send one copy of the enrollment form, dues distribution and/or cash dues distributions forms to WEA. **Important: During heavy enrollment times, please remit weekly.**
- Return membership roster and agency fee payer roster to WEA with corrections.
- Contact payroll office to set up new deductions.
- Distribute new membership cards and calendar books to continuing members.
- Return unused preprinted membership cards to WEA with notation for reason returned.
- Give new members a calendar book and other promotional literature. Membership cards will be mailed by WEA directly to new members added during the year.

- Write check to WEA for payment of cash dues and contributions, including NEA, WEA, Community Outreach, UniServ and Local dues. If applicable, NEA FCPE and WEA-PAC contributions should be remitted separately.

September, October and November: Adding New Members

- Give the payroll officer the names and amounts of dues to be deducted for new members using multipart dues distribution and signed enrollment forms. Payroll officers should add new members immediately to the next billing.
- Deadline to return corrected membership roster and agency fee payer roster to WEA is October 10.

Calendar of Important Dates

* May 31	Deadline for UniServ Dues to be reported to WEA.
* July 31	Deadline for Local dues to be reported to Premera Blue Cross, the School District payroll office, WEA and the UniServ council.
August 9-13	Arrival of membership materials.
August 31	Last date for continuing members to terminate membership for the coming year.
September	Dues deductions begin for new school year.
October 10	Annual cash membership payment is due. Return corrected membership roster and agency fee payer roster to WEA.
October 31 **	Last date for new persons employed in September to enroll and receive legal services for the current membership year.
December 1 **	Deadline for new membership enrollment forms to be received by WEA to qualify for WEA and NEA delegate requirements.
December 15	Deadline for Local Associations to report names and addresses of all new Agency Fee payer employees to the appropriate WEA Membership Contact.

May 1	Deadline for NEA Student Rebate Request.

* If local or UniServ dues amounts are not received by these dates, payroll offices will be billed at the same rate as the previous year. Local or UniServ dues adjustments will not be made until February 1 billing (January payroll).

** New members must have dues deducted for the month of October to qualify as dues paying members for delegate purposes.

Agency Fee Payers

Most bargaining units negotiate contracts with employers that contain an Agency Fee Provision. This agreement provides that since the Local Association is recognized as the sole collective bargaining agent for a bargaining unit, even though an employee may not wish to become an Association member, he/she is still required to pay a fee equal to dues in return for bargaining and representation services.

In Agency Fee units, all new employees should begin paying either Agency Fees or Dues immediately. **An Agency Fee payer may become a Member at any point by signing a Membership Enrollment Form.**

National, State, UniServ and Local Agency Fees equal to dues amounts must be deducted. Follow directions for calculating Agency Fees in the same manner as for active members, except that Community Outreach dues and Political Action contributions (NEA FCPE and WEA-PAC) are **not** to be deducted.

The Local Treasurer or Payroll Office should:

- Complete an Agency Shop Employee form--it is not necessary for the employee to sign this form.
- Complete the Agency Shop Fee Payer Roster Report and return it to the WEA Membership Department.

WEA will not accept Agency Fees from ESP Extra-Curricular employees.

WEA will not accept Agency Fees from Substitute teachers without annual, express approval by the WEA Legal Department.

It is essential that WEA be notified of Agency Shop Fee payers in order to provide necessary services as provided under RCW 28A.72.

Agency Fee Payers are not Association Members, and will not be issued Membership Cards.

DO NOT deduct Community Outreach, NEA FCPE or WEA-PAC contributions from Agency Fee payers.

[29] ANNUAL MEMBERSHIP DUES

	WEA Class/ Subclass	NEA Dues	WEA Dues
Active Certificated Membership			
Certificated 0.67 - 1.00 FTE	AC-1-100	$123.00	$287.00
Certificated 0.51 - 0.66 FTE	AC-1-66	$123.00	$143.50
Certificated 0.34 - 0.50 FTE	AC-1-50	$64.00	$143.50
Certificated 0.26 - 0.33 FTE	AC-1-33	$64.00	$95.50
Certificated 0.25 or less FTE	AC-1-25	$34.50	$95.50
Substitutes	AC-1-1	$34.50	$95.50 / $48.00
Daily Full-Day Rate (90 Days		$0.38	$1.06
Daily Half-Day Rate (90 Days)		$0.38	$0.53
Part-Time AHE	AC-1-17	1% of gross quarterly salary plus $1.67 per quarter for NEA Special Dues	

Higher Education employees are ineligible to
via payroll deduction, but may become cash

Active ESP Membership			
ESP 0.51 - 1.00 FTE	AC-2-100	1% of monthly base salary plus $0.42 per month for NEA Special Dues	
ESP 0.26 - 0.50 FTE	AC-2-50		
ESP 0.25 or less FTE	AC-2-25		
ESP Substitutes	AC-2-1	$20.37	$48.00
ESP Extra-Curricular	AC-2-123	$20.37	$12.00

NEA FCPE and WEA-PAC are optional for all members,
WEA-PAC requires a new, signed author

2000-2001 (continued)

Community Outreach	NEA FCPE		WEA-PAC
$12.00	$12.00	DO	$12.00
$12.00	$12.00		$12.00
$12.00	$12.00	NOT	$12.00
$12.00	$12.00		$12.00
$12.00	$12.00	Deduct	$12.00
$12.00	$12.00		$12.00
		WEA-PAC	
$0.13	$0.13		$0.13
		without	
$0.13	$0.13		$0.13
		an	
$4.00/ quarter		annual	

contribute to NEA FCPE or WEA-PAC members.

$12.00/ year	$12.00	signed	$12.00
$12.00/ year	$12.00		$12.00
$12.00/ year	$12.00	Authori-	$12.00
$12.00	$12.00	zation	$12.00
	$12.00		$12.00
		Form	

and require a signed authorization.
ization each year.

WEA-DAV 2371

BEST AVAILABLE COPY

[30] ANNUAL MEMBERSHIP DUES

	WEA Class/ Subclass	NEA Dues	WEA Dues
NEA Life Members	(offered prior to July, 1973)		
Certificated 0.67 – 1.00 FTE		$0.00	$287.00
Certificated 0.51 - 0.66 FTE		$0.00	$143.50
Certificated 0.34 - 0.50 FTE		$0.00	$143.50
Certificated 0.26 - 0.33 FTE		$0.00	$95.50
Certificated 0.25 or less FTE		$0.00	$95.50
Substitutes		$0.00	$95.50 / $48.00
Part-Time AHE	1% of gross quarterly salary		
ESP 0.51 - 1.00 FTE	1% of monthly base salary		
ESP 0.26 - 0.50 FTE	1% of monthly base salary		
ESP 0.25 or less FTE	1% of monthly base salary		
ESP Substitutes	1% of monthly base salary		
Agency Shop Fee Payers			
Certificated 0.67 – 1.00 FTE	FP-1-100	$123.00	$287.00
Certificated 0.51 - 0.66 FTE	FP-1-66	$123.00	$143.50
Certificated 0.34 - 0.50 FTE	FP-1-50	$64.00	$143.50
Certificated 0.26 - 0.33 FTE	FP-1-33	$64.00	$95.50
Certificated 0.25 or less FTE	FP-1-25	$34.50	$95.50
Substitutes	FP-1-1	$34.50	$95.50 / $48.00
Part-Time AHE	FP-1-17	1% of gross quarterly salary plus $1.67 per quarter for NEA Special Dues	
ESP 0.51 - 1.00 FTE	FP-2-100	1% of monthly base salary plus $0.42 per month for NEA Special Dues	
ESP 0.26 - 0.50 FTE	FP-2-50		
ESP 0.25 or less FTE	FP-2-25		

NEA FCPE and WEA-PAC are optional for all members,
WEA-PAC requires a new, signed author

2000-2001 (continued)

Community Outreach	NEA FCPE		WEA-PAC
$12.00	$12.00	DO	$12.00
$12.00	$12.00	NOT	$12.00
$12.00	$12.00	Deduct	$12.00
$12.00	$12.00	WEA-PAC	$12.00
$12.00	$12.00	without	$12.00
$12.00	$12.00	an	$12.00
		annual	
$4.00/quarter		signed	
$12.00/year	$12.00	Authori-	$12.00
$12.00/year	$12.00	zation	$12.00
$12.00/year	$12.00	Form	$12.00
$12.00/year	$12.00		$12.00

Do Not Deduct Community Outreach, WEA-PAC or NEA FCPE from Agency Shop Fee Payers

and require a signed authorization.
ization each year.

WEA-DAV 2372

Forms Distribution Summary

(Sample forms are on the following pages)

Forms	Part 1	Part 2
Enrollment Form	WEA	Payroll Office
Cash Renewal Form	WEA	Payroll Office
SWEA Form	SWEA	
WEA-Retired Form	WEA-Retired	
Agency Shop Form	WEA	Payroll Office
Notification Of Cancellation Form	WEA	Payroll Office
Personal Data Change Form	WEA	Payroll Office
WEA-PAC Authorization Form	WEA	Payroll Office
NEA FCPE Authorization Form	WEA	Payroll Office
APA Dues Distribution Form	WEA	Payroll Office
Cash Dues Distribution Form	WEA	Payroll Office
Local Dues Notification Form	WEA sends to local presidents in mailing	Local President completed form WEA, School

[con't on next set of facing pages]

Part 3	Part 4
Local Association	Member
Local Association	Member
Local Association	
Local Association	
Local Association	
Local Association	
Local Association	
Local Association	
Local Association	

should send a photo copy of the
to the following: Premera Blue Cross,
District office and Uniserv Council office

Forms	Part 1	Part 2
WEA Membership Forms Request	WEA Membership Department as needed	
Continuous Roster	WEA sends to local presidents in mailing	
Renewal Roster	WEA sends to local presidents in mailing	
Agency Fee Payer Roster	WEA sends to local presidents in mailing	

Part 3	Part 4
Return 1 part to WEA by Oct. 10, with corrections	
Local corrects & returns to WEA	
Local corrects & returns to WEA	

[41]

WEA Washington Education Association

AGENCY SHOP EMPLOYEE FORM

PLEASE PRINT

The following employee has chosen not to join the Association representing the bargaining unit, and will have representation fees deducted monthly from payroll. (Employee signature is not required.)

Social Security Number ☐☐☐-☐☐-☐☐☐☐

Today's Date _____ Date of First Deduction _____

Local Association _____ School District/ESD _____

Job Title/Subject _____ School Bldg/Work Site _____

☐ Certificated ☐ Classified ☐ Higher Ed FTE _____

Last Name _____ First Name _____ Middle _____

Current Address (Street, Route or box) _____ Apt. # _____

City _____ State _____ Zip _____

Home Phone _____

Completed by _____

Please return top copy to WEA Membership Department 33434 8th Ave. S. Federal Way, WA 98003-6397 253-941-6700

AMOUNT OF ANNUAL DUES

NEA	WEA	UNISERV	LOCAL

White - WEA Membership Copy Yellow - Payroll Office Copy Pink - Local Association Copy

10/97

WEA-DAV 2383

[44]

WEA-PAC

Washington Education Association Political Action Committee

WEA-PAC Membership Authorization

This authorization is valid for no more than twelve (12) consecutive months. It is effective on **September 1, 2000**, and it expires on **August 31, 2001**.

Name _____ SS# _____
(Last Name) (First Name) (Middle Initial)

Local Association _____ Work Site _____

Home e-mail address

☐ Certificated ☐ Higher Education ☐ Staff
☐ Classified ☐ WEA-Retired ☐ Student

Cash or Check Contributions

I wish to contribute to WEA-PAC and hereby enclose **cash** or **check** in the following amount: ☐ $12 ☐ $24 ☐ $60 ☐ $120 ☐ Other _____

Payroll Deduction Contributions

☐ I authorize the _____ School District to withhold **$12.00** per year from my earnings in order to make political contributions to the Washington Education Association Political Action Committee in Federal Way, Washington. *Note: Higher Education, Retired and Student members are not eligible for the payroll deduction option.*

Signature _____ Date _____

According to state law, no employer or labor organization may discriminate against an officer or employee in the terms and conditions of employment for (a) the failure to contribute to; (b) the failure in any way to support or oppose; or (c) in any way supporting or opposing a candidate, ballot proposition, political party or political committee.

WEA Washington Education Association 33434 8th Avenue S., Federal Way, WA 98003-6397 253-941-6700 FAX: 253-946-4692

Original - WEA Membership Department Yellow - District Payroll Office Pink - Local Association

WEA-DAV 2386

[Caption omitted in printing.]

DECLARATION OF MILTON L. CHAPPELL IN SUPPORT OF PLAINTIFFS' REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

MILTON CHAPPELL, on oath declares as follows:

1. I am one of the attorneys for the Plaintiffs. I make this declaration based on my personal knowledge, and I am competent to testify as to matters stated herein.

2. Attached hereto as Exhibit A is a true and correct copy of the Defendant's Responses to Plaintiffs' First Set of Interrogatories and Requests for Production of Documents to Defendant Washington Education Association.

* * * * *

I have read the foregoing, believe it to be correct, and certify and declare the same under penalty of perjury of the laws of the State of Washington.

Signed at Springfield, Virginia this 30th day of October, 2001.

//s//

Milton L. Chappell, Esq.
c/o National Right to Work
Legal Defense Foundation
8001 Braddock Road, Suite 600
Springfield, VA 22160

[Caption and title omitted in printing.]

Exhibit A

INTERROGATORY NO. 6: For each named Plaintiff, state the information requested:

	Date Joined WEA	Date Resigned WEA	Dates An Agency Fee Payer	Amounts Paid in Agency Fees by Fiscal Year
Gary Davenport	None	None	9/98-4/00	98-99 $195.45 99-00 $190.48
Martha Lofgren	None	None	9/1/97 to present	97-98 $115.20 98-99 $ 80.80
Walt Pierson	1977	1995	9/1/95 to present	See below
Susannah Simpson	None	None	9/1/96 to 8/31/00	See below
Tracy Wolcott	2/18/00	8/01	9/1/94 to 2/18/00 and 9/01 to present	See below

INTERROGATORY NO. 6 (CONTINUED)

See General Objection 1. Without waiving this objection, for the years in which a named plaintiff paid agency fees, named Plaintiffs, Pierson, Wolcott and Simpson paid the following amount in agency fees for each respective year:

1997-98	$265
1998-99	$272
1999-00	$272
2000-01	$287
2001-02	$295

[Caption omitted in printing.]

DECLARATION OF JUDITH LONNQUIST

JUDITH A. LONNQUIST, on oath declares as follows:

1. I am one of the attorneys for the Defendant. I make this declaration based on my personal knowledge, and I am competent to testify as to the matters stated herein.

2. Attached hereto are true and correct excerpts from the deposition transcripts of Gary Davenport, Martha Lofgren, and Susanna Simpson. Although the depositions of Walt Pierson and Tracy Wolcott have been taken, the transcripts have not yet been prepared.

I have read the foregoing, believe it to be correct, and certify and declare the same under penalty of perjury of the laws of the State of Washington.

Signed at Seattle, Washington this 1st day of November, 2001.

//s//
Judith A. Lonnquist
WSBAA #06421

[Caption & title page omitted in printing.]

Deposition Transcript of Gary Davenport [10/18/01]

* * * * *

[16]

23 Q When you first were offered a non-continuing
24 contract with the Kent School District were you
25 also offered the opportunity to join the education

[17]

1 association?
2 A Yes.
3 Q And I take it you declined?
4 A In declining by not signing?
5 Q Well, did you join?
6 A No.
7 Q And was there a reason why you didn't join?
8 A I didn't really want to be part of the union.
9 Q Why?
10 A I think in talking with some of the people that
11 were involved in it, our maybe philosophies are
12 different.
13 Q Okay. Could you expand on that for me, please?
14 A I mean, in how in I think the purpose or the intent
15 of some of the things that go on in a union shop.
16 Q Let me ask you a few more specific questions then.

You said you talked to people involved in the association. Who did you talk to?

A I don't know his first name but a Mr. Walker I believe was the current president of the local KEA.

* * * * *

[20]

Q In fact do you know whether people that you taught with knew whether or not you were a member of the KEA or not?

A The people in my department did. And I think both our departments, the social studies and English department did.

Q But there wasn't any problem, you didn't have any problem with that?

A There were -- I can't specifically remember but there were times where you might get the feeling that somebody might say something about it or had said something about it to other people.

Q And how did you know that?

24 A Just by coming in on conversations or something.

* * * * *

[25]

21 Q Okay. Did you ever receive a big packet of
22 materials from the WEA?
23 A A big packet from the WEA?
24 Q Correct.
25 A Not that I remember. I remember more getting

[26]

1 something from the KEA rather than the WEA.

* * * * *

[27]

4 Q Okay. How about school levies, do you -- did Kent
5 run any school levies while you were teaching
6 there?
7 A Yes.
8 Q Were you living in the district too at the time?
9 A Yes.
10 Q Did you vote in favor of the levies?
11 A I don't believe I did.
12 Q Okay. Why not? You didn't want your taxes to go
13 up?
14 A The why-not question? Or the second one?
15 Q I was leading the witness.

A Right. I voted no I believe because the levies always go up. And it seems as though we're promised that we'll do better things if we have more levies and yet we continue to be promised more things to have more levies.

Q Have you ever voted for a school levy?

A Yes.

* * * * *

[36]

Q And if you were to learn that your agency fees in fact don't go to supporting individual candidates, would that change your feelings about this lawsuit?

A If I were to learn that they didn't go --

Q (Interposing) Did not go to support individual candidates would that change your feelings about this lawsuit?

A I don't believe so because it wasn't limited just to political candidates, that was just one of the inclusions in politics.

Q What else do you understand -- let me ask it this way. What else do you understand to be in politics, in the term politics, with which you disagree that fees should be spent for or could be

spent for?

A Probably in -- I guess one, representing the people that are being chosen. And then also two, probably some of programs that--educational programs or so that I might disagree with.

Q What educational programs?

A An educational program I guess if I voted yes on the vouchers or the charter schools, I would say if money was used to combat that then that would be something I guess I would disagree with.

* * * * *

[Caption & title page omitted in printing.]

Deposition Transcript of Martha Lofgren [10/18/01]

* * * * *

[9]

Q And were you offered an opportunity in the '96-'97 school year to join the Kent Education Association and its affiliates?

A I believe I was, yes.

Q And tell me about that, how were you offered that opportunity?

A It must have come in the mail, some form.

* * * * *

Q And in whatever form it was I take it you didn't exercise the opportunity to join?

A That's correct.

Q Okay. And was there a reason for that?

A Yes.

Q And tell me the reason, please.

A I disagree with the union on moral and political issues.

[10]

Q What moral and political issues?

A The union has stated that they see homosexuality as a legitimate alternative lifestyle. I do not agree with that. They're also against school choice and vouchers. And I believe they support candidates that I cannot support.

Q And on what do you base your understanding of the union's positions?

A I have received or looked at some publication they put out, I don't recall the name. And I did read their statement, I don't know what they call it but it lists outright what they stand for. And the homosexuality issue was mentioned in there.

Q And was this a document from the Kent Education Association or from the Washington Education Association?

A I believe it was from the Washington Education Association.

Q And when you say you read something that they put out would that have been like a newspaper or a letter, do you recall?

22 A I think it's a magazine format.

* * * * *

[25]

1 Q Okay. And do you believe that it was -- do you
2 believe that it was appropriate for your bargaining
3 representative, the Kent Education Association, to
4 support school levies?
5 A I don't think I can generalize and say that.
6 Q It would depend on what the levy is for?
7 A Yes.
8 Q Okay. But as a concept you don't -- you don't have
9 any moral or political opposition to association
10 supporting an appropriate school levy do you?
11 A I don't have any opposition to that.

* * * * *

19 Q Do you recall Initiative 173?
20 A Not now.
21 Q Charter schools?
22 A Vaguely.
23 Q Do you know did you vote in that -- for that?
24 A I probably did.

* * * * *

[26]

BY MS. LONNQUIST:

Q Did you support -- did you vote yes on the initiative?

A I believe I did.

Q Okay. Did you contribute money to the political campaign committee that supported Initiative 173?

A No.

Q Okay. And did you hold a political position or any kind of position that charter schools would help or hurt the public education system?

A I did not think of their effect on the public education system. I'm thinking of the needs and the welfare of students.

Q So you believe -- I'm sorry, go ahead.

A If it helps students and that happens to hurt public schools, then so be it. What's more important, the students or maintaining a public school system that may not be as good as it could be.

* * * * *

[27]

Q Initiative 177 was an initiative that would

establish a voucher system, I heard you say something about vouchers earlier?

A Yes.

Q You support a voucher system?

A Yes.

Q And that would be for both private and parochial schools?

A Yes.

[28]

Q I take it you voted in favor of Initiative 177?

A Yes.

Q Do you recall Initiative 732, which was a cost of living adjustment for public school employees?

A Yes, I do.

Q And you know that one passed?

A Well, I didn't keep track of it much.

Q Did you support that initiative?

A No.

Q Why not?

A I wasn't sure if it was the right thing to do and I thought until I'm absolutely sure vote no.

* * * * *

[31]

Q If you learned that neither the WEA nor the Kent or

Auburn Education Associations supports political candidates would that change your position about not joining?

A No.

Q Is there any anything that would prompt you to join a labor union at this point in your career?

A If I read a statement by this union that indicated that they had similar values to mine I might join.

Q And when you say similar values are you referring to homosexuality?

A That would be one.

Q All right. What are the others?

A Probably something along the lines of acknowledging God and a statement about -- something more patriotic and probably it would have to include something about school choice.

Q And when you say school choice what are you referring to?

A For parents to be able to decide which school to

[32]

send their children to.

Q Don't parents have that choice now?

A No. Well, not within the public school system we don't. And I think we should be allowed to use our contributions, our tax contributions -- we should be allowed to take those to the school of our choice, whether it's a public school or private.

* * * * *

[Caption & title page omitted in printing.]

Deposition Transcript of Susanna Simpson [10/18/01]

* * * * *

[10]

10 Q Okay. When you became a full-time employee of the
11 Edmonds School District in the '96-'97 school year
12 were you offered the opportunity to join the
13 education association?
14 A Yes.
15 Q How did that come about?
16 A I believe it was just in the paperwork that they
17 gave me when I got the position.
18 Q Did you do so?
19 A No, I did not.
20 Q Why not?
21 A I didn't go into teaching wanting to be part of a
22 union. My goal was strictly to teach the kids and
23 be able to enjoy that and I didn't really want to
24 have anything to do with the things that the union
25 does, the political side, the strikes.

[11]

1 Q Has there been a strike in the Edmonds School

District since you joined the staff?

A Yes.

Q And when was that?

A I don't remember the exact date, it was a one-day walkout.

Q Was it the year you began teaching?

A No.

Q It was later. So when you say you didn't join in '96-'97 because of strikes, was that just a general opposition to labor stoppage, work stoppages?

A Yes, as far as education goes.

Q Uh-huh, okay. Anything else about being a member of a union other than the political side and strikes that prompted you not to join?

A No.

Q When you say the political side what are you referring to?

A I didn't want to be involved in any of the political things that they may work on or support. I would prefer to chose myself what I support politically with my money and time.

Q And what was your understanding about the political

25 things in which the Edmonds Education Association

[12]

1 was involved?

2 A Not a ton at the time. It was more just not

3 wanting to be involved.

4 Q Not wanting to be involved in general?

5 A Right.

6 Q Okay. Did you make any inquiries in '96-'97 about

7 what kinds of activities the union was engaged in?

8 A Not specifically that I recall.

9 Q Then the following year, '97-'98, were you again

10 offered an opportunity to join the union?

11 A Yes, I was.

12 Q And you declined for the same reasons?

13 A Yes.

* * * * *

[14]

19 Q Have you received any communication at all from the

20 WEA or the EEA?

21 A Since I was hired?

22 Q Yes.

23 A Yes.

Q What kinds of publications have you received?

A One of them is a very large packet that comes every

[15]

year.

* * * * *

Q Okay. * * * Tell me about the large packet, it comes in the mail, what do you do with it?

A I read the front page maybe, scan it, and put it in a drawer.

Q Still have them?

A I may have one in my files which are packed away.

But I may have one.

Q Have you ever read it from cover to cover?

A No.

Q Why not?

A Because it's very, very large. And it comes at a time when teachers are especially busy.

Q Comes in October generally?

A Sometime around September, October.

Q And then doesn't another one come in December?

A I'm not sure, I don't remember.

[16]

Q Has anybody ever explained to you what the packet is?

A No.

Q So do you have any idea as to whether or not the packet notifies you that if you want to contact the WEA you can get some money back?

A I do now. I did not at the time.

* * * * *

[22]

Q Do you recall that there was a ballot proposition with respect to charter schools?

A Yes.

Q Did you favor or oppose that ballot initiative?

A I don't recall exactly how it was stated so it would be hard for me to say. I know my opinion on the subject.

Q What is your opinion on the subject?

A I'm in favor of charter schools.

Q What's the basis for your support of that proposition?

A It allows choice for parents and kids.

Q Do you recall whether you voted for the charter

schools initiative?

A I voted in favor of charter schools.

Q Okay. And do you recall there being a ballot proposition with respect to vouchers?

A Yes.

Q What's your position on vouchers?

A I'm in favor of vouchers.

[23]

Q Even if used to support parochial education?

A I'm in favor of anything that offers choice and opportunity.

Q Okay. Did you vote in favor of the voucher initiative?

A Again, I don't recall the exact wording on the ballot but I would have voted in favor of having vouchers, yes.

* * * * *

Q Sure. I think it was in 1999 or 2000, there was a ballot proposition that automatically adjusted the salaries of classroom teachers based on whether or not there had been inflation in the cost of living. Those are called COLAs, cost-of-living adjustments. As a general rule do you support that

proposition, that teachers' salaries should go up as inflation goes up?

A Yes, I believe salaries should increase with inflation.

[24]

Q Okay. And do you recall whether you voted yes on that proposition?

A I don't recall. I only vaguely recall it for some reason.

Q Okay. Do you recall that a year or so ago there was a ballot proposition that reduced class size?

A Again, vaguely.

Q Do you support reduction of class size?

A I would like a smaller class.

Q Why?

A The fewer students you have the more time you can spend with each one.

Q So do you find -- have you had various class sizes in the course of your teaching experience?

A Yes.

Q And are you a more effective teacher in a smaller class?

A Yes, I would say so.

Q Do you recall whether or not you voted yes on the

class-size referendum?

A I don't recall.

Q If you were guessing you'd say probably yes?

A I would have to say I would look at what the opposite side was, what it was costing before I would make a decision.

* * * * *

[25]

Q Since you have been employed in the Edmonds School District have there been levy elections in Edmonds?

A In Edmonds, yes.

Q And were you supportive of -- not necessarily voting for it or working for it -- but were you generally supportive of the passage of levies in the Edmonds School District?

A I didn't pay that much attention.

Q Do you understand what levies are for?

[26]

A Yes.

Q Okay. Tell me what your understanding is.

A It would be generally increases the property tax to provide more funding for whatever they are pushing

for that levy, whether it be new buildings, class size, new teachers.

Q And as a matter of general principle do you support rehabilitating old school buildings and hiring new teachers if needed and reducing class size?

A Yes.

Q Do you have any philosophical, moral, religious, spiritual opposition to labor unions?

A No.

Q Hypothetically if the class-size initiative, which passed, had the effect of reducing class size in the Edmonds School District, would you support that?

A It would depend upon what the cost was.

Q Okay. And if you -- when you return to school as a teacher in the Edmonds School District you in fact had a smaller class, would you be appreciative of that?

A Yes.

Q Okay. Same thing with respect to the cost-of-living adjustment. If when you ultimately

[27]

return to teaching in the Edmonds School District

and you found out that because of the

cost-of-living adjustment you've gotten two

increases, two step increases in your salary, would

you be appreciative of that?

A Yes.

RELEVANT DOCKET ENTRIES

PDC v. WEA

THURSTON COUNTY SUPERIOR COURT
No. 00 2 01837 9

October 9, 2000 Complaint

March 9, 2001 Amended Answer

April 6, 2001 Defendant WEA's Motion For Summary Judgment And Memorandum In Support Of Summary Judgment

April 6, 2001 Plaintiff PDC's Motion For Summary Judgment And Memorandum In Support Of Summary Judgment

April 23, 2001 Defendant WEA's Response To Motion For Summary Judgment

April 23, 2001 Plaintiff PDC's Response To Motion For Summary Judgment

April 30, 2001 Defendant WEA's Reply To Response To Motion For Summary Judgment

April 30, 2001 Plaintiff PDC's Reply To Response To Motion For Summary Judgment

May 5, 2001 Summary Judgment Hearing

May 11, 2001 Plaintiff PDC's Trial Brief

May 14, 2001 Non-Jury Trial

May 14, 2001 Plaintiff PDC's Supplemental Trial Brief

May 15, 2001 Order Granting Summary Judgment To Plaintiff PDC

May 15, 2001 Order Denying Summary Judgment To Defendant WEA

May 17, 2001 Defendant WEA's Supplement Trial Brief

July 31, 2001 Court's Decision (Letter Opinion)

November 7, 2001 Letter Statement Of Defendant RE Proposed Findings And Conclusions

November 7, 2001 Memorandum Concerning Injunction (Proposed Injunction Itself)

November 7, 2001 Memorandum Of Plaintiff RE Injunction (Supporting Proposed Injunction)

November 8, 2001 Defendant's Reply RE Injunction

November 9, 2001 Motion Hearing Findings And Conclusions And Injunction

November 15, 2001 Motion Hearing (cont'd) Findings And Conclusions And Injunction

December 3, 2001 Final Judgment

December 3, 2001 Entry Of Findings Of Fact And Conclusions Of Law

December 3, 2001 Entry Of Order For Permanent Injunction

December 6, 2001 Motion By Plaintiff For Costs And Fees

December 21, 2001 Reply Of Defendant RE Plaintiff's Costs And Fees

December 31, 2001 Notice Of Appeal to Court Of Appeal

December 31, 2001 Plaintiff's Reply Memorandum For Cost And Fees

January 4, 2002 Motion Hearing Plaintiff's Costs And Fees

January 4, 2002 Entry Of Order For Costs And Fees

WASHINGTON COURT OF APPEALS
No. 28264-0-II

April 29, 2002 Opening Brief on Behalf of Appellant, Washington Education Association

July 23, 2002 Respondent WEA's Brief

November 18, 2002 Appellants Reply Brief

February 3, 2003 Amicus Curiae Brief National Education Association

February 20, 2003 PDC Answer To amicus Curiae Brief National Education Association

February 24, 2003 Amicus Curiae Brief Washington State Labor Counsel

February 24, 2003 Amicus Curiae Brief Pacific Legal Foundation

March 14, 2003 PDC Answer To Amicus Curiae Brief Washington State Labor Counsel

March 21, 2003 WEA Answer To Amicus Curiae Brief Pacific Legal Foundation

March 27, 2003 Oral Argument Hearing

June 24, 2003 Opinion

July 15, 2003 WEA's Emergency Motion For Stay Of Injunction

July 21, 2003 PDC's Response To Motion

July 23, 2003 Reply In Support Of WEA's Emergency Motion For Stay Of Injunction

July 24, 2003 Order Granting Stay Of Injunction

WASHINGTON SUPREME COURT
No. 74268-5

July 24, 2003 PDC's Petition For Review

August 21, 2003 WEA's Answer To Petition For Review

September 5, 2003 PDC's Reply to PDC's Answer To Petition For Review

October 2, 2003 Amicus Curiae Brief Pacific Legal Foundation

November 13, 2003 WEA's Answer To Amicus Curiae Brief Pacific Legal Foundation

February 3, 2004 Order: Petition For Review Is Granted And Davenport Is Consolidated

March 22, 2004 Supplemental Brief Of Petitioner PDC

March 23, 2004 Supplemental Brief of Respondent WEA [PDC]

March 23, 2004 Supplement Brief Of Respondent WEA's [Davenport]

March 26, 2004 Amicus Curiae Brief Pacific Legal Foundation

April 12, 2004 Amicus Curiae Brief Washington Federation Of State Employees

April 27, 2004 Respondent WEA Answer To Amicus Curiae Brief Of Pacific Legal Foundation

May 4, 2004 Amicus Curiae Brief Washington State Labor Council

May 4, 2004 Amicus Curiae Brief National Education Association

May 13, 2004 Petitioner PDC Answer To Amicus Curiae Briefs Of Washington Federation Of State Employees, Washington State Labor Council, And National Education Association

May 27, 2004 Oral Argument Hearing

March 16, 2006 Opinion

April 10, 2006 Mandate

October 2, 2006 Letter From United States Supreme Court Advising The Petition For Writ Of Certiorari Is Granted

FILED
Oct 09 2000
SUPERIOR COURT
BETTY J. GOULD
THURSTON COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON, ex. rel. WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION, Plaintiff, v. WASHINGTON EDUCATION ASSOCIATION (a Washington Non-Profit Corporation), Defendant.	No. 00 2 01837 9 COMPLAINT FOR VIOLATION OF RCW 41.27.760

The plaintiff, for causes of action against the defendant, alleges as follows:

PARTIES

1.1 The Washington State Public Disclosure Commission (Commission) was established by RCW 42.17.350 and is charged by RCW 42.17.360-.370 with, *inter alia*, the responsibility of enforcing RCW 42.17.760. The Commission office is in Olympia, Washington. The Commission investigated a complaint against the defendant. The Commission referred this matter to the Attorney General's Office under RCW 42.17.395(3) for review and potential legal action under RCW 42.17.390 and RCW 42.17.400. The Attorney General also received

a citizens' complaint letter against the defendant under RCW 42.17.400(4).

1.2 The defendant Washington Education Association (WEA) is a labor organization representing public school and educational employees in Washington. The WEA is a non-profit corporation in Washington, headquartered in Federal Way, Washington with offices in Olympia and Spokane, Washington.

JURISDICTION AND VENUE

2.1 This Court has subject matter jurisdiction over the defendant under RCW 42.17.400.

2.2 The defendant has carried out the violations alleged, in whole or in part, in Thurston County. Venue is proper in this Court pursuant to Chapter 4.12 RCW.

LAW

3.1 RCW 42.17.760 requires that: "A labor organization may not use agency shop fees paid by an individual who is not a member of the organization to make contributions or expenditures to influence an election or to operate a political committee, unless affirmatively authorized by the individual."

FACTUAL ALLEGATIONS

4.1 On September 25, 2000, the WEA, through its legal counsel, signed a "Stipulation of Facts, Violations and Penalty" in the Commission case *In the Matter of the Enforcement Action Against the Washington Education Association, Respondent*," Commission case number 01-002 ("Stipulation"). A true and correct copy of the Stipulation is attached to this Complaint and incorporated by reference. Upon accepting the Stipulation, the Commission voted unanimously to refer the case to the Attorney General's Office because it found an apparent violation of RCW 42.17.760, based on the actual violations agreed to by the WEA. The Commission

also found that its penalty authority was insufficient given the stipulated facts in this case and that a referral was warranted.

4.2 The WEA is a labor organization. Stipulation ¶1.

4.3 The WEA has approximately 68,000 current dues paying members. Dues received by the WEA from its members, or portions thereof, are deposited in the WEA general treasury.

4.4 The WEA also collects "agency shop fees" from those public school and educational institution employees whom it may legally charge with the cost of union representation and negotiation, but who choose not to become members of the labor organization ("agency fee payers"). *See* RCW 41.59.100.

4.5 The WEA collects agency shop fees from approximately 4,407 agency shop fee payers. These funds are deposited in the WEA's general treasury. Stipulation ¶2.

4.6 During the past five years, the WEA has expended funds from its general treasury for political contributions described in RCW 42.17.760. A portion of these expenditures is attributable to agency fee payers in proportion to their contributions into the WEA general treasury.

4.7 The WEA stipulated that it did not have affirmative authorization from agency fee payers to use their money to make contributions and expenditures to influence an election or operate a political committee. Stipulation ¶¶ 3 - 4.

CLAIM

Based on the foregoing allegations, plaintiff makes the following claim:

5.1 The WEA committed multiple violations of RCW 42.17.760. Stipulation, page 2.

REQUEST FOR RELIEF

WHEREFORE, the plaintiff requests the following relief as provided by statute:

1. For a civil penalty against the defendant in an amount to be determined at trial.

2. For an award of treble damages, if the violations are proven to be intentional.

3. For all costs of investigation and trial, including reasonable attorney's fees;

4. For injunctive relief; and

5. For such other relief that the Court deems appropriate.

DATED THIS *9th* day of October, 2000.

CHRISTINE O. GREGOIRE
Attorney General

//s//
STEPHEN T. REINMUTH
Assistant Attorney General
WSBA No. 18343

//s//, for
NANCY J. KRIER
Assistant Attorney General
WSBA # 16558

Attorneys for Plaintiff

BEFORE THE PUBLIC DISCLOSURE COMMISSION STATE OF WASHINGTON

IN THE MATTER OF THE ENFORCEMENT ACTION AGAINST Washington Education Association, Respondent.	CASE NO. 01-002 STIPULATION OF FACTS, VIOLATIONS AND RECOMMENDATIONS

The Washington Education Association (Respondent) and Public Disclosure Commission Enforcement Staff (Staff) agree to the following:

1. The Respondent is a labor organization.
2. The Respondent deposited into its general fund agency fee money from 4,194 individuals.
3. The Respondent's general fund money was used to make contributions and expenditures to influence an election and to operate a political committee.
4. The Respondent did not have affirmative authorization from agency fee payers to use their money for these purposes.
5. The Respondent contends that the number of 4,194 is over-inclusive in that it includes persons who were members of WEA and did not pay agency fees.
6. Staff contends that when Respondent submitted documents in response to a subpoena, a redacted list of 4,407 agency fee payers was presented. Names of the agency fee payers were redacted and replaced with a unique identification number for each agency fee payer. Of these, 4,407 individuals, 213 either filed objections or challenges to their

funds being used for 'non-chargeable' expenditures and received a refund of the portion of their fees being used for non-chargeable purposes. The funds from the remaining 4,194 individuals were then transferred from the agency fee escrow account to WEA's general operating fund.

7. Staff were unable to determine the amount of agency fees used to make the contributions and expenditures referred to in paragraph 3 because WEA's final revenue figures for FY 2000 (September 1, 1999 through August 31, 2000) are not yet available.

Violation

Respondent and Staff agree that Respondent committed multiple violations of RCW 42.17.760.

Recommendation

Staff recommends that this matter be referred to the Office of the Attorney General for further review pursuant to RCW 42.17.395(3). Respondent does not oppose the recommendation by staff.

Respectfully submitted this 25th day of September, 2000.

//s//	//s//
Vicki Rippie, Executive Director	Harriet Strasberg, Counsel
PDC	WEA

FILED
FEB 23 2001
SUPERIOR COURT
BETTY J. GOULD
THURSTON COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON, ex. rel. WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION, Plaintiff, v. WASHINGTON EDUCATION ASSOCIATION (a Washington Non-Profit Corporation), Defendant.	No. 00 2 01837 9 DEFENDANT'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW Washington Education Association (hereinafter "WEA"), by and through its attorneys, Judith A. Lonnquist, Harriet Strasberg and Aimee Iverson, and hereby submit Defendant's amended answer, admitting, denying and alleging as follows:

1. Defendant admits that the Washington State Public Disclosure Commission (Commission) was established by RCW 42.17.350 and is charged by RCW 42.17.360–.370 with, *inter alia*, the responsibility of enforcing RCW 42.17.760. Defendant admits that the Commission office is in Olympia, Washington. The Defendant admits that the Commission investigated a complaint against Defendant. Defendant admits that the

Attorney General received a citizens' complaint letter against Defendant pursuant to RCW 42.17.400(4). Defendant admits that the Commission referred this matter to the Attorney General pursuant to RCW 42.17.395(3) for review. The Defendant denies the remaining allegations contained in Paragraph 1.1.

2. Defendant admits the allegations contained in Paragraph 1.2.

3. Defendant admits the allegations contained in Paragraph 2.1.

4. Defendant admits the allegations contained in Paragraph 2.2.

5. Defendant admits the allegations contained in Paragraph 3.1, and affirmatively states that it did not use agency shop fees to make contributions or expenditures to influence an election or to operate a political committee.

6. Defendant admits that WEA, through its legal counsel, signed a "Stipulation of Facts, Violation and Penalty" in the Commission case *In the Matter of the Enforcement Action Against the Washington Education Association, Respondent.*" Case No. 01-002 ("Stipulation"). Defendant admits that a true and correct copy of the Stipulation is attached to the Complaint. Defendant admits that upon accepting the Stipulation, the Commission voted unanimously to refer the case to the Attorney General's Office because it found an apparent violation of RCW 42.17.760, based on actual violations agreed to in the Stipulation. Defendant denies the remaining allegations contained in Paragraph 4.1.

7. Defendant admits the allegation contained in Paragraph 4.2.

8. Defendant admits the allegations contained in Paragraph 4.3.

9. Defendant admits the allegations contained in Paragraph 4.4.

10. Defendant admits that it collects agency shop fees from agency shop fee payers but denies that the number is 4,407. Defendant admits that a portion of these funds is deposited in the WEA's general treasury and denies the remaining allegations contained in Paragraph 4.5

11. Defendant admits that during the past five years, it has expended funds from its general treasury for contributions and expenditures to influence an election or to operate a political committee. Defendant denies the remaining allegations contained in Paragraph 4.6.

12. Defendant admits that it stipulated that it did not have affirmative authorizations from agency fee payers to use their money to make contributions and expenditures to influence an election or operate a political committee from September 1, 1999 to August 31, 2000, and affirmatively states that it did not use their money for such purposes. Defendant denies the remaining allegations contained in Paragraph 4.7.

13. Defendant admits that it agreed that it committed multiple violations of RCW 42.17.760, but only from September 1, 1999 to August 31, 2000. Defendant denies the remaining allegations contained in Paragraph 5.1. Defendants [sic] note that Paragraph 5.1 sets forth legal conclusions that are not answerable herein.

WHEREFORE, Defendant request [sic] that the Plaintiff's Complaint be dismissed with prejudice.

By way of further answer, the Defendant asserts the following affirmative defenses:

1. Plaintiff's Complaint is barred by the doctrine of laches and/or statute of limitations.

2. RCW 42.17.760 is unconstitutionally vague and therefore void.

3. Defendant's actions are consistent with, in reliance upon and justified by a complex process required under federal law and by the terms of a Settlement Agreement. Federal law and the Agreement require the Defendant to escrow agency fees and to give agency fee payers the opportunity to request and receive a rebate of certain funds. Although deposited in the general fund, agency fees are not expended to influence elections or for a political committee.

4. Any violation alleged to have been committed by Defendant was unintentional.

5. Defendant contends that it did not violate RCW 42.17.760. Confronted with what it believed was a misinterpretation of law by the agency and in the absence of any agency guidelines, in order to access the courts and properly frame the legal issues for court review, Defendant entered into the above-referenced stipulation based on the agency's interpretation.

6. To the extent that the agency fees were maintained in an escrow account, these funds were not available for use as contributions or expenditures to influence elections or to operate a political committee.

7. Since Defendant's end-of-year general fund balance exceeded the amount of agency fees collected, no agency fees could have been used as contributions or expenditures to influence elections or to operate a political committee.

8. Defendant made its election-related expenditures from its reserve, which did not contain agency fees.

9. Plaintiff's Complaint is barred to the extent that it exceeds the scope of the citizen's complaint.

WHEREFORE Defendant requests that it recover its costs and disbursements contained herein, including their reasonable attorneys' fees.

Dated this 23rd day of February, 2001.

//s//
JUDITH A. LONNQUIST, WSBA #06421
Attorney For Defendant

//s//
HARRIET STRASBERG, WSBA #15890
Attorney for Defendant

//s//
AIMEE IVERSON, WSBA #28610
Attorney For Defendant

The Honorable Gary R. Tabor

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

State of Washington ex rel. Public Disclosure Commission, Plaintiff, v. Washington Education Association, Defendant.	No. 00-2-01837-9 PLAINTIFF'S SUPPLEMENTAL TRIAL BRIEF

COMES NOW Plaintiff, by and through its attorneys, Christine O. Gregoire, Attorney General, D. Thomas Wendel, Assistant Attorney General, and Richard A. Heath, Special Assistant Attorney General, and respectfully submits the following arguments and authorities for the May 14, 2001 trial in the above-captioned matter:[1]

Defendant WEA argues in its trial brief that the costs of internal political communications made by it to its members are not considered contributions to a candidate or political committee, and, therefore, they cannot be considered expenditures under RCW 42.17.760. Defendant's argument ignores the plain language of RCW 42.17.760 which covers "contributions *or* expenditures." Its argument also ignores the definitions of "expenditure" and "contribution" in RCW 42.17.

[1] Incorporated by reference is all prior briefing by Plaintiff.

RCW 42.17.020(19) (copy [not] attached) defines "expenditure" to include "a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value . . . ." Thus, a "contribution" is but one subset of "expenditure." Expenditure also includes a "payment" as well as numerous other items. Defendant's argument would make "expenditure" a subset of "contribution," and would read the word "expenditure" out of the statute. Furthermore, and in contrast to the definition of "contribution" (RCW 42.17.020(14) (copy [not] attached), the definition of expenditure does *not* exclude internal communications.

The WEA also attempts to avoid the plain language of RCW 42.17.760 by claiming that "expenditure" as used therein is limited to "independent expenditures which must be reported to the PDC. First, the language in the statute is not so limited, and secondly, there is a separate definition in RCW 42.17 for "independent expenditure"; RCW 42.17.020(24). "Independent expenditure" is not the term used in RCW 42.17.760, the term used is simply the broader term "expenditure."

When the WEA makes a payment to cover the costs of an internal political communication it is making an expenditure. If it is the type of political expenditure covered by RCW 42.17.760, and agency fees are used, affirmative authorization is needed. For example, if the WEA pays to produce and distribute a publication to its approximately 64,000 members which endorses certain candidates for election to the legislature it would be doing so to influence the election. Regardless of whether the WEA would have to report this internal expenditure of funds to the PDC as a contribution to the candidates, the lack of a reporting requirement does not mean the

WEA did not expend funds to influence the election of those candidates.

The purpose of RCW 42.17.760 is clear on its face. A non-member's fees cannot be used to influence an election without that individual's affirmative authorization. Defendant's asserted interpretation reads that requirement entirely out of the statute.

Non-members have no say in who the WEA endorses for election, or what position the WEA will support on ballot initiatives. In recognition of this situation, and in furtherance of non-member's First Amendment rights, RCW 42.17.760 requires affirmative authorization from each individual fee payer before their fees can be used for such purposes.

Defendant argues that it has core political free speech rights that would be infringed were it required to obtain affirmative authorization before it could use non-member agency fees to influence how its members vote in an election. That argument is wrong for at least two reasons.

First, the WEA's argument ignores the non-member agency fee payer's First Amendment rights not to have their fees used to fund political expenses. All of the case law previously cited in this case demonstrates that such rights must be protected. *See Hudson, Abood, Street, Hanson, Powerhouse.*

Secondly, the WEA is not inhibited in its ability to attempt to influence its membership through internal communications. It can use its member's fees for these purposes, or the fees of nonmembers who affirmatively assent.

In conclusion, RCW 42.17.760 covers more expenditures than just those required to be reported to the PDC as contributions. Defendant's interpretation to the contrary is not warranted by the plain language of the statute or the case law.

Respectfully submitted this *12* day of May, 2001.

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Attorney General

//s//
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WEA v. PDC Excerpts from Trial Record
and Injunction Hearing[2]

(Page numbers refer to the report of proceedings
of the trial held May 14–18, 2001, except as noted.)

* * * * *

THOMAS HEDGES

[39]

9 Q. Will you please state your full name.

10 A. Thomas Albert Hedges.

11 Q. Your employment position, sir?

12 A. Washington Education Association as Chief Financial

13 Officer.

* * * * *

[40]

16 Q. Do you have responsibilities -- let's talk about your

17 job as the Chief Financial Officer. Why don't you

18 give us a broad brush description of those

19 responsibilities, please.

20 A. I have responsibility for overseeing the accounting

21 and membership operations, the technology operations,

22 human resources and business, other business services

---

[2] All mistakes in the original transcription have been retained; they may or may not be indicated with "[sic]".

for the Association, plus preparing an annual budget for the Board of Directors to adopt and reporting to them on an annual basis with regard to the accounting

[41]

of the Association.

Q. So you report to the board?

A. Yes.

Q. Do you report to other officials in the organization?

A. My first line of supervision is to the Executive Director.

Q. Who within the Association has the authority to sign checks?

A. The Executive Director.

Q. Do you have that authority also?

A. Yes, I do, in his absence.

Q. Anybody else in the Association have the authority to sign checks by the Association?

A. No, sir.

Q. So it's you, you and Mr. Seibert?

A. Yes.

Q. Are you aware as to whether that is something that is

provided by the constitution or by-laws?

A. No, I'm not.

Q. As the Chief Financial Officer, do you have a responsibility to ensure that the record keeping and the financial structure of the organization is designed to comply with applicable laws?

A. Yes.

Q. That those structures are designed to be able to show,

[42]

demonstrate the compliance with applicable laws?

A. Yes.

* * * * *

[52]

Q. And when you write checks, let's talk about the sweep process. Why don't you describe that how that works in the interaction between the reserve account and the Bank of New York and the Bank of America checking accounts.

A. We have an obligation with the Bank of New York to maintain a minimum balance, which I believe is

$175,000 in the checking account. Depending how many checks have been written, that amount will be swept, if you will, from the Bank of New York account to maintain a sufficient balance to honor those checks as represented.

Q. You have standing instructions, don't you, to the Bank of America and the Bank of New York to do a daily reconciliation between those accounts?

A. Yes.

* * * * *

[53]

Q. Transfers are made on this basis, pursuant to the standing arrangement between the banks, this sweep occurs on a daily basis and as a result transfers are made from the Bank of New York reserve account to the Bank of America checking account frequently, right?

A. Well, I think in your diagram here there's a small box that indicates 65 to 75 annual sweeps, and that's my

best guess of a reasonable number that would occur.

* * * * *

[54]

Q. And over the years that escrow account has been handled in different ways to your knowledge, right, in the sense of how much is escrowed?

A. The calculation of the amount to be placed into escrow has changed in the last two years.

Q. Okay. And I guess I kind of jumped over the part of what we're escrowing.

What -- is it your intent or the Association's intent to put into escrow in the U.S. Bank account?

A. We place into escrow an estimate of the amount of fees that agency fee payers would be paying on a monthly basis to all levels of the Association.

Q. And you said that that had changed in the last couple of years?

A. That is correct.

Q. Why don't you describe your knowledge of the history of what has been escrowed for fees.

A. Again my history will go back to January 1st of 1997 when I was employed by the Association. For the first two years of my employment there the amount to be placed into escrow was based on the number of challengers and objectors we had for the previous reporting period, plus an estimate for some growth to maintain an acceptable level going into the escrow to

[55]

represent what fees they would be paying. The last two years we have modified that number to include all agency fee payers not just challengers and objectors.

Q. I don't know if we have access to a tear sheet, perhaps after the break. It might be easier to illustrate, but what I'm hearing you say is we might need to go through a few steps.
You have on the order of 3,000, 4,000 fee payers every year within the state of Washington under WEA's umbrella, right?

A. Correct.

Q. And you go through a process every year where you inform the fee payer how their money is going to be spent if they don't object, right?

A. Yes.

Q. And then if they do object you give them a refund, or if they challenge you give them a refund, right?

A. That is correct.

* * * * *

[59]

Q. All right. So, on Exhibit 157, we're dealing with the WEA escrow account which was intended to represent some reserved fee payer money. Every year you go through this process and you issue refund or rebates, which do you call it?

A. Refunds.

Q. To objectors and challengers that would otherwise be spent, and then what happens to the escrow account?

A. The escrow is relieved of the amount of money that has

been deposited once the challengers and the objectors has been refunded their calculated 12 month refund.

Q. Okay. So, now those refunds are not actually written on checks from U.S. Bank, are they?

A. No, they're not.

Q. And as we see on the bottom left of Exhibit 157, is it accurate that those checks are actually written under the Bank of America account?

A. Yes, it is accurate.

Q. And so first you write the checks and then that money is sitting in the escrow account; is that right?

A. Yes, it is.

Q. And after the checks are written it goes back to the

[60]

Bank of New York reserve fund, the escrow account does? When the U.S. Bank escrow account is relieved it does flow back into the Bank of New York account.

A. Okay.

Q. You call that zeroed out?

A. It depends on what time of the year you're talking about. We will typically make a refund to challengers and fee payers of the first mailing of the Hudson notice in December or January, and we will only relieve the escrow account for those numbers of individuals who have received the refund at that point in time, and there will be a balance maintained there pending completion of the second notice, Hudson notice.

* * * * *

[125]

Q. Prior to Public Disclosure investigation which began during the summer of 2000, August or September, you were never aware of the existence of 42.17.760, were you?

A. That is correct.

Q. To your knowledge, Washington Education Association has never before the summer of 2000 when the PDC began investigating, considered any measures specifically

for the purposes of implementing requirements of RCW 42.17.760, have they?

A. I have not been involved in any conversations about that.

* * * * *

[134]

At the top there the WEA clearly indicates as identified as the Bank of New York, are there any other forms of revenue that go into that account aside from the WEA dues and fees that are identified on the left there?

A. Yes, there are.

Q. And can you explain what those are, please?

A. We have miscellaneous income that comes to the Association, we have grants from organizations outside the Association, we would have miscellaneous reimbursements for either materials that our Association would be selling to members or the general public, or courses and classes that the Association may conduct that would be going into the Bank of New

15 York account.

16 Q. So is it fair to say in addition to dues and fees any

17 other dollars that comes into the Association goes

18 into that account?

19 A. That's correct.

20 Q. Now, with respect to the bottom of the chart there the

21 WEA, what's been identified as the WEA sweep account

22 with Bank of America, are there any other expenditures

23 that come out of that account?

24 A. Yes. Every expenditure that the Association would

25 make would come out of the Bank of America account.

[135]

1 That is the only checking account that we have for the

2 general fund of the organization.

* * * * *

THOMAS R. BAIER

[150]

12 Q. Would you please state your full name.

13 A. My name is Thomas Ray Baier.

14 Q. And by whom are you employed?

15 A. Washington Education Association.

Q. And what is your position?
A. Supervisor of Membership Systems.
Q. Can you describe your duties as Supervisor of Membership Systems?
A. Yes, I can. I coordinate the activities of WEA personnel who maintain records about individuals and about memberships.
Q. You say you coordinate, who do you coordinate with?
A. Other WEA staff.
Q. At the WEA headquarters or elsewhere?

[151]

A. Staff at both the headquarters as well as Uniserv offices.
Q. And that would be throughout the state?
A. Yes, sir.

* * * * *

[159]

Q. You're responsible for the book?
A. That's true.
Q. So somebody could ask to you create such a form and you could put that in this book?
A. Yes.
Q. And then instructions could be sent to the Uniservs or

whoever is filling this document out and say please present this to the agency fee payer and see if they will sign it?

A. It would have to be sent to not only all of the Uniservs but all our local associations. We have over 360 local associations and all of them run their businesses in different ways.

Q. But you could add such a form to your booklet with instructions like that?

A. Yes.

Q. Wouldn't be a problem?

A. No, it wouldn't be a problem.

* * * * *

[174]

Q. And you had mentioned there are four levels of dues; is that correct?

A. Yes.

Q. And that's pursuant to unified membership requirement; is that correct?

A. Yes, there's -- in the governing documents for I believe both NEA as well as WEA and other association

affiliates, there is a provision which we refer to as

[175]

unified dues, meaning that basically if someone is a

member of the Association they are a member of the

Association at all levels to all affiliates.

Q. And so there are essentially four dues deductions made

for employees, correct?

Let me rephrase that. All employees would pay

the same or have the same deduction made for their NEA

dues and their WEA dues or fees?

A. Their core dues would be the same.

Q. And then their local and Uniserv dues may vary

depending what particular council or local they belong

to?

A. Correct.

Q. And then with respect to a person's FTE status, is

there a further stratification depending on their FTE

status?

A. Yes, there is. There's actually significant

complexity in that area, because WEA, for instance,

makes provision for there to be a dues break for members who work less than two-thirds time but more than one-third time. Those members pay half WEA dues. Employees who work a third time or less pay one-third WEA dues. Unfortunately, while the breaks for WEA based on FTE are at one-third and two-thirds FTE, the breaks for NEA are made at one-half and one-quarter.

[176]

And likewise, there are other models in place at Uniserv Council as well as other associations, so it is a rather complicated matrix to figure out what part-time Association members pay because each separate entity of the Association, each affiliate and state affiliate and local affiliated that has its own sets of governing documents and its own independent democratic association.

Q. And you'd been asked some questions on direct about having the anticipated agency fee payer fill out the

agency fee form; do you recall that?

A. I recall talking about the agency fee form.

Q. And there was -- now with respect to making deductions on behalf of agency fee payers, would there be any affect on your membership system or your APA administration if there was a differing amount that fee payers, that various fee payers were required to or were affiliated on behalf of some fee payers and not others?

A. Yeah, it would basically double the complexity of what is already a pretty complicated system. We deal with about 300 different school district employers in the state of Washington, and, as I mentioned, their willingness and even technical ability to help us with membership and dues collection issues varies widely.

[177]

Not all school districts, like local associations, neither can be easily generalized or categorized or

painted broadly. School districts differ broadly in the -- only in their willingness or ability to help us but also in the technical tools that they have available to do so. Payroll offices vary in what kind of software they use, what kind of hardware they use, how many given payroll slots they have available, how many different amounts they're allowed to charge in a given payroll slot. So changing -- if what you're asking is if fee payers remitted a different amount than the core dues that that would be challenging, it would be considerably more than challenging not only to the Association but also the school district payroll offices.

* * * * *

[187]

Q. -- with your answer? Sorry.

And earlier I'd asked you some questions about effects various actions or designations or actions would have upon the complexity of the APA system; do

you recall those questions?

A. Yes.

Q. And I'm not sure I was clear when I asked the question initially, but with respect to fee payers, if some fee payers or district were asked to set an amount for fee payers and a different amount for other fee payers, would that have any affect upon the complicity of the system?

A. Oh, yes, that could be very difficult to administer because in many cases, you know, the membership staff who are responsible for tracking, for tracking dues and tracking membership, we simply don't have. I'm not sure that we would have the tools or the data structures available to accurately administer something like that. It would be very difficult certainly for not only the Association but also for school districts

Q. And is that cooperation or compliance with that system be anything you could unilaterally impose upon school

25 districts?

[188]

1 A. Certainly not.

* * * * *

[203]

18 Q. Are you testifying that it's not -- did I understand

19 your testimony, and you can tell me if I'm wrong, in

20 answer to Mr. Gawley's questions that it would be

21 extremely difficult to in light of the fact that you

22 have all of these other dues categories here to add

23 one more dues category?

24 A. But it wouldn't be adding one more, it would be adding

25 more for every single one of these. My understanding

[204]

1 from Mr. Gawley's question earlier was related to

2 deducting different core dues amounts for fee payers

3 from those core dues amounts currently deducted for

4 members. So you would be, in effect, it would be in

effect double this matrix. It wouldn't be adding one more category, it would be adding six more categories.

Q. Are you saying it can't be done?

A. No, I'm not saying it can't be done.

* * * * *

[206]

Q. There's been no indication to you at least that the person who's filling the agency fee payer form out talk or be instructed to talk to the agency fee payer and to ask them whether they wish to have their fees used for to support a or for a -- to operate a political committee or to influence an election?

A. I haven't had a conversation like that with anyone.

Q. If you were -- if the WEA decided as a matter of policy that it was going to refund money to all fee payers at the end of a year, would they come to you for information about who those people are?

A. Not to me directly. The best source of that information would be the people who are maintaining

the memberships, the membership records for the given
local association.
Q. But you would have a computerized record at least of
who was paying agency fees during that -- under the
current system at least?
A. There would be a computerized record for someone who

[207]

is an agency fee payer. It may not include all levels
of the fees being paid.
Q. But if the WEA Executive Director said to you, "I want
to give a refund of three dollars to every agency fee
payer, can you tell me who they are and how much
that's going to cost me," would you use your database
for that?
A. There would be a lot of manual calculation involved.
Q. But you could do it?
A. Membership staff would be able to gather data that
would facilitate that kind of a request.

Q. I'm only referring to the current year in that question.
A. I don't think that changes my answer.
Q. It would still be partly a manual process?
A. Yes.
Q. And that's because you haven't maintained the records in that way that would allow you to do that or because that's the only way you can do it?
A. It's a combination. Local associations again are independent entities and do not provide us with their dues structure with sufficient lead time that we're capable of tracking local dues on a computerized record. The same thing holds true for many Uniservs. The computerized membership record does not always

[208]

contain the financial information about local Uniserv dues.
Q. But it does have it for the WEA dues?
A. For classified personnel it does not because classified fee payers, the dues structure is percentage based, it is not a fixed amount, so it

would be manual calculation for every classified individual.

Q. At least that's the way -- that's the way the records are currently maintained?

A. Not only the record maintenance, but also the dues structure and governing structure of WEA.

* * * * *

KATHRYN O'TOOLE

[212]

Q. Good morning. Would you please state your name.

A. My name is Kathryn O'Toole. I prefer to be called Kathy.

Q. All right. Can I call you Ms. O'Toole?

A. Yes, please.

Q. Ms. O'Toole, what is your occupation?

A. I'm a lawyer.

Q. Where are you employed?

[213]

A. At the Washington Education Association.

Q. And during the 1990s where were you employed?

A. The Washington Education Association.

Q. What was your title during that period of time?

A. I had two titles in the 1990s. One was General

Counsel and the other was Special Counsel.

* * * * *

[232]

So what would happen here is if a fee payer didn't follow the instructions provided above, that deadline

[233]

instruction within those 30 days and fill out their own piece of paper or form of communication, they would lose their opportunity to object?

A. Not exactly. First of all, all they -- we didn't require them -- we didn't -- if we got one that didn't state, you know, all the things listed there 1 through 5, we didn't state this is no good, okay? All we needed is notice from them that they wanted to object or challenge and we would send the rebate once -- once we knew that this person did not want their fees used for nonchargeable items. And there is a second mailing, this is the first mailing. We know by the end of June who all the agency fee payers in a particular school district are. And we

send the Hudson mailing out in August because the courts require that 30-day time period to think it over. So that means we're relying on old information because when the paycheck deductions start at the end of September, there will be a lot of new employees in every school district, and so we have a second mailing we send out typically in December where anybody's name that we have from whom we are collecting funds from and we don't have a membership form, we consider those people agency fee payers and we send them a second mailing, give them another 30 days, send the refunds,

[234]

rebates to those people sometime in January.

* * * * *

JAMES S. SEIBERT

[254]

Q. Would you please state your name.

A. My name is James, middle initial S., Seibert.

Q. Your employment position?

[255]

A. Executive Director of the Washington Education Association?

Q. For how long?

A. Since January of 1988.

* * * * *

[259]

Q. Now, you're not aware, are you, of any fee payer who has ever come forward and affirmatively auth rized the expenditure of his or her fees for the purposes identified in 42.17.760?

A. I am not.

* * * * *

Q. Were you aware that the Washington Education

[260]

Association admitted in September of this year to multiple violations of RCW 42.17.760?

A. Yes.

Q. Are you aware of anything the organization, the Association has done since that time in order to obtain affirmative authorizations from individual agency fee payers?

No.

* * * * *

Q. I'd like to show you what's been marked as Exhibit 1 and direct your attention, I'm sorry, I'll look at it with you, to Paragraphs 3 and 4. Would you read those, please?

* * * * *

Q. You see here that the Washington Education Association is the respondent?

A. Yes.

Q. Were you aware of and did you authorize entry into this stipulation?

A. I was aware of it. It was authorized by the Board of Directors.

Q. And it says here, it talks in Paragraph 2 about the deposition into the general fund fee money from 4,194 individuals; do you see that?

A. Yes, I do.

Q. And you don't disagree with that, do you?

A. No.

Q. That was done in every fiscal year from '94/95 to the

[261]

[262]

present, not the same number of people but the process?

A. To the best of my knowledge.

Q. And Paragraph 3 it says, "The general fund money was used to make contributions and expenditures to influence an election and to operate a committee."

That was a true statement, was it not?

A. Yes.

Q. And that was a true statement for the years 1995/96 up to and include the present, is it not?

A. I think, yes, it was.

Q. And in Paragraph 4 it says, "The respondent did not have affirmative authorization from agency fee payers to use their money for these purposes." That is a true statement from the fiscal year 1995/96 to the present, is it not?

A. Yes.

Q. I'd like to take a few minutes and go over some of the exhibits we have with you, some others I should say.

May I have Volumes 3 and 4, please.

While I'm getting these out, you have had some involvement in the what we've come to call the Hudson process every year during your tenure, haven't you?

A. I've been -- I know about the Hudson process. When you say some involvement, I'd like you to be more

[263]

specific.

Q. I will try to. I'd like to show you Exhibit 26 in Volume 4. Let's go to Exhibit 27. That's Volume 3, is it? Sorry. We're on Exhibit 27. You see the first page there? There is some handwriting towards the right in the upper portion, appears to say J.S. Seibert?

A. Yes.

Q. That is your signature?

A. Yes, it is.

Q. Let's take a look at Exhibit 28. Can you turn to that tab?

Again, your signature?

A. Yes.

Q. Exhibit 29?

A. Yes.

Q. Your signature?
A. Yes.
Q. And back to Exhibit 26, your signature also?
A. Yes.
Q. All right let's turn back to Exhibit 27 and spend a few minutes on that.
Now, first of all, without reading the letter if you can do so, I'd like you to say why it is you send this letter to fee payers with the attachments.

[264]

Did you hear the question?
A. No, sorry.
Q. Why is it that you send these letters to fee payers?
A. Well, we're required to do that.
Q. Are you the author of the contents of this letter?
A. No.
Q. You sign it?
A. Yes.
Q. Do you read it when you sign it?
A. Yes.
Q. So you're aware of its contents?
A. Yes.
Q. There is no form provided to fee payers, is there?
A. No.

Q. They have to, if we take a look at the second page of
Exhibit 27, at the top of that page there's a list of instructions, excuse me, third page, it says, "You may object by notifying James Seibert," et cetera, "at the following address," correct?
A. Yes.
Q. Has the Washington Education Association ever considered creating a form for this?
A. A form for agency fee payers to inform us?
Q. Yes.
A. Not to my knowledge.

[265]

Q. Do you see a little bit below the numbered items one through five it says, "If some written objection has not been postmarked by September 28th, 1997, you will waive your ability to object"?
A. Yes.
Q. Why is that deadline imposed?
A. Because we encumber huge sums of money waiting to find out whether these individuals will object or challenge, and so we have to set some deadline or --

at some point in the process or it could just go on forever.

Q. Is -- are you aware of what the effect is if somebody objects or challenges?

A. Yes.

Q. They get a refund, don't they?

A. Yes.

Q. Objectors get a refund right away and challengers, don't they?

A. They get, yes, they get a refund right away. Challengers can get an additional refund later on if the arbitration indicates that their challenge is sustained.

Q. And if an objector objects and does not challenge, the objector won't get an additional refund; is that right?

[266]

A. That's my understanding.

Q. And if neither objects or challenges they couldn't get a refund at all; is that correct?

A. That's right.

* * * * *

Q. We were talking about the Hudson packet and

objections, and isn't it true that you would hope that
a nonmember, a fee payer, would not be able either in
response to a Hudson packet or unprompted say to the
Association, "Make me a permanent objector, please,
and not have to object every year"?

* * * * *

A. My preference is to have every educational employee
make a decision every year as to whether or not they
wish to join the organization, become a member,
because I think we strive eternally to try to improve

[267]

the organization and attract those who may at some
point in their career decide they don't want to be
members to be members.

Q. So it would be your preference not to allow nonmembers
to be permanent objectors?

A. Yes.

* * * * *

[268]

Q. I'm curious if you can say why it doesn't say at the beginning of this letter, "If you send us an objection we'll send you a check or a refund"?

A. It's never been in any of the letters and I don't know why we haven't put it in there. I've never said don't put it in.

* * * * *

[269]

Q. Why don't you go ahead and recite in a reasonably concise fashion, if you can, your understanding of your job description.

A. I'm responsible for the implementation of the programs and policies that are adopted by the governing structure of the organization through the direction of the staff. I have responsibility for the overall employment of individuals, the work of the WEA.

[270]

Although I don't make each individual employment decision, those are my responsibilities. I have a responsibility for personnel matters, for

relationships with our employee organizations.

* * * * *

[328]

Q. What is the Citizens for Quality Education?

A. Citizens for Quality Education was a committee formed by a variety of groups who were supportive of public education.

Q. And do you know why they were formed?

A. They were formed to support Initiative 732.

Q. Which is what?

A. It was the initiative that required the State to provide cost of living increase to education employees.

[329]

Q. Why did WEA contribute substantial contributions to -- in support of that initiative?

A. Educational employees stood to benefit significantly if this initiative passed and significantly more than they have benefited in the last decade over funding for salary increases from the state.

Q. And would fee payers benefit from the passage of that

initiative too?

A. Yes, fee payers, all educational employees benefited from that.

Q. Does the Washington Education Association write checks for political candidates?

A. The Washington Education Association does not.

* * * * *

JEFFREY L. BALIBAN

[345]

A. Jeffrey Lee Baliban.

Q. Your occupation?

A. I'll [sic] an economist and a CPA.

Q. Would you please describe your educational background?

A. I have a Bachelor of Science Degree in Accounting that I received from Fairleigh Dickinson University in 1977. I've been a practicing accountant since then.

I received my -- I completed my CPA testing in 1981, and I hold a Master of Arts Degree in Economics from the University of Texas that I completed in 1995.

Q. Would you describe your experience, professional

[346]

experience?

A. I began my professional career again in 1977. I was with a firm known then as Ernst & Ernst which is now known as Ernst & Young. I was with them for about three years, maybe a little more. After that I was with a company called Campos & Stratus, which was a smaller boutique-type firm getting involved in economic damages issues and economic impact analyses, and I left there in 1999 and joined KPMG who I'm still with today.

Q. What is your position with KPMG?

A. I'm a partner with the firm. My current designation is partner in charge of the dispute advisory services sometimes known within the firm as forensic and [illegible] tion services.

* * * * *

[347]

Q. Thank you. Now, we've asked you to review some

materials and offer some opinions for this matter, and I'd like you to describe, please, if you could, what kind of information you reviewed in preparation for forming opinions for this case.

A. Well, basically I've reviewed deposition testimony, I reviewed the deposition testimony of Mr. -- I believe it's Seibert or Seebert (phonetic).

Q. We pronounce it Seibert.

A. That's one thing you can't get out of a transcript is the right pronunciation. I reviewed Mr. Seibert's, reviewed Mr. Hedge's deposition testimony. I reviewed Mr. Vanetta's deposition testimony, I think two volumes of Mr. Vanetta's deposition testimony. I reviewed Mr. Hedge's declaration. I reviewed exhibits and attachments to the various depositions and declarations including Hudson packets, Weekly Activity Report or at least examples of Weekly Activity Reports. I think that that is basically the information from which I'm drawing my opinions.

Q. Can you describe what you've learned about how the WEA fee payer accounting works from those records and

[348]

depositions?

A. Well, I've learned several things. I mean, I've learned about the Hudson process that the WEA goes through with regard to the fee payers. I've learned about chargeable and nonchargeable expenses. I've also read by the way the statute, what I've been calling statute 760 which is I think 42.17.760, I believe.

Q. Very good, yes.

A. I've learned the process that they go through, the WEA goes through in attempting to deal with the Hudson process and attempting to deal with objections from fee payers to the nonchargeable expenses. I've learned the source of their accounting information, that is, the Weekly Activity Reports and how they're

used. I've learned from the transcripts changes that have been made to their accounting processes and procedures since the advent of 760. That's it in general.

Q. I'd like to talk about some of the opinions I've asked you to provide for purposes of this case, and the first opinion I'd like to talk about is whether or not fee payer money was used for political expenses.

A. Okay.

Q. And I haven't asked you, have I, to actually audit the

[349]

records of the organization, correct?

A. That's correct, and I've not done so.

Q. And I've also not asked to you determine whether or not affirmative authorization was or was not obtained from fee payers to use their money for political purposes, right?

A. I haven't independently made any kind of a determination, that's correct.

Q. What I would like you to do is assume that there were expenditures from the Washington Education

Association's general fund and that there was no affirmative authorization obtained from fee payers to use their money for political expenditures. I'd like to ask your opinion, nevertheless, whether the Washington Education Association has used fee payer money for political expenses.

A. Based on what I know with regard to the accounting processes and the bank accounts that are used, based on what I know with regard to the Hudson process and the segregating of fee payer money and then the commingling of fee payer money, it's my opinion that once it's commingled to whatever extent political expenditures are made out of that commingled account, a proportionate amount of fee payer money is used

* * * * *

[362]

Q. All right. So again, is it your opinion whether the WEA used fee payer money to pay political expenses for -

the fiscal periods September 1, 1995, to the present,
excluding the present fiscal period where they've escrowed all of it?

A. Where they've escrowed all of it it's not commingled.
You can maintain the separateness of anything until you commingle it. Before I contribute it that separateness is maintained, but if you're telling me -- well I know that they have commingled the funds.
If you're telling me that political expenditures were made out of a commingled fund, then I will tell you that a proportionate share was paid for by fee payer money.
Now, if you're also telling me that affirmative authorization was not obtained to do so, then those expenditures were made without affirmative authorization.

* * * * *

[418]

Q. Now, you have -- assume you have a fund where there

are commingled funds and the organization wants -- of
dues and fees and other revenues, and the organization
wants to spend money for -- wants to use some of that
money for political expenditures, it's your view that
the only way they can do that because of your
proportionality premise is by having affirmative
authorizations, correct?

A. From the fee payers.

[419]

Q. From the fee payers?

A. I think that that's true.

Q. And that would mean that they would have to have
affirmative authorizations, as you use the term, from
100 percent of fee payers, correct?

A. From 100 percent of fee payers that contributed money
to that fund.

Q. In the hypothetical that's 100 percent?

A. If all fee payers put money into that fund.

Q. Right.

A. And you want to use money in that, along with other
dues payers and other revenue sources.

Q. Right.

A. And you want to use money out of that fund.

Q. Right.

A. It's my --

Q. For political purposes.

A. For political purposes. It's my opinion that unless you have the affirmative authorization to fee payers you can't do that without spending a portion of fee payer money.

Q. Every single affirmative -- every single fee payer has to give you an affirmative authorization?

A. Every single fee payer that contributed to that fund has to give you affirmative authorization.

* * * * *

[429]

Q. Now, you were asked a lot of hypotheticals dealing with what is effectively a cap on political spending. I'm curious, does your opinion foreclose a structure that would allow members to use their money in their

collective judgment as time goes on without a cap on political spending? Is there a way that could be allowed?

A. Oh, absolutely.

Q. Would you provide some examples?

A. Well, I think I said in response to Ms. Lonnquist's questions, she asked me to hone in on to the advanced reduction aspect of a way to comply with 760, and asked me to assume that there are all sorts of our accounting processes and procedures in place to assure compliance, and I assumed that. I also I think I said that that wouldn't be my first choice. What my first choice would be to do exactly what they're doing now with regard to the Hudson process and, that is, take all the fee payer money and segregate it out, separate it out. You can, if you receive affirmative authorization from some fee payers, you can contribute their portion to a general fund, but everybody else's you keep separate and you

only contribute as on a reimbursement basis to the
general fund to the extent you receive affirmative

[430]

authorization to do so. If you don't, you refund back
a portion of those fees.
Q. Are there other mechanisms that could be conceived of
as well that could avoid a cap on political spending
by the membership itself with its money?
A. Well, there are accounting methodologies that you
could use to try to use to separate out what's being
paid, but I would say that segregating the fee payers'
revenues would be the best. And then you can use the
dues payer funds in any way you like.
Q. And I think your fundamental opinions were, if I
remember accurately, to the extent my notes are
accurate, create an audit maker of expenditures, keep
track of those expenditures?
A. That's correct, I did say that, yes.
Q. Identify the fee payers who provide affirmative

authorization and those who don't?

A. You want to keep records. I think what I said was I want to keep records who are your dues payers, who are your fee payers that have provided affirmative authorization, and who are your fee payers who have not provided affirmative authorization.

Q. And I have, I don't know if it's --

A. You want to provide a good audit trail of what your expenditures are. You want to be able to reconcile

[431]

that to your financial statements. To whatever extent you have collected money and commingled, you'd want to make an appropriate rebate, a prompt rebate. But if you take the Hudson process as it is now which separates out the money and you proceed through the year without commingling that money and make whatever expenditures you want out of your fund, at the end of the year Ms. Lonnquist pointed out you're

able to look back and you're able to determine exactly how much was spent on political expenditures. To whatever extent you have affirmative authorization from fee payers, they can contribute on a reimbursement basis to that fund, to whatever extent that a fee payer does not give you affirmative authorization, you then know at that point exactly what proportion of every fee payer's dollar has been contributed or that every dollar that goes into the general fund has been used for political expenditures because you're looking back. After that's done you can contribute or, I'm sorry, you can rebate to the fee payer that portion of that relates to political expenditures, much like they do now with the Hudson process on a proportionality basis. The rest can be contributed to the general fund to reimburse the general fund for every other

[432]

expenditure in proportion to which it was spent.

Q. And that would allow, then, the emergency initiative to be dealt with as it arose under Ms. Lonnquist's hypothetical to you, would it?

A. You could use the general fund for anything you wanted to use so long as you didn't commingle the funds and you don't have fee payer money in there without affirmative authorization. Other than that, I'm not aware of any other statute that limits what you can use that money for.

Q. And is that kind of arrangement consistent with your opinion?

A. It is.

* * * * *

LEE ANN PREILIPP

[448]

Q. Would you state your name and spell your last name for the record, please.

A. Yes. Lee Ann Preilipp. Preilipp, P-R-I-E-L-I-P-P.

Q. And what is your occupation?

19 A. I'm the President of the Washington Education
20 Association.

* * * * *

[449]

17 Q. And do you supervise any employees?
18 A. That's not my direct venue. What I do is work on the
19 governing side.
20 Q. And who [sic] would you describe for the Court, please, what
21 the work on the governance side, what it is, what it
22 covers?
23 A. As the elected leader I work with other leaders in the
24 state who represent their local associations. I also
25 work with membership. We have approximately 70,000

[450]

1 members, and it's my job to carry through with what it
2 is that the members of the organization want to have
3 done.

* * * * *

[453]

1 Q. Do you believe that it is important to the interests

of educational employees that WEA be involved in politics?

A. Yes, it is.

Q. And why do you believe that?

A. Well, the situation is one of, in this state, that the funding and other issues related to our working conditions, where we work in our school settings, are decided by the legislature and other governing bodies and, therefore, in order to help make sure that we have made education the best it can be for our students and our staff we have to be involved with those who make those decisions.

Q. And how about ballot propositions, do you feel WEA must take a role with respect to that, some ballot propositions?

A. Yes. Those that affect, once again, the school employees, whether it's a statewide initiative such as 732 or 728, which were class size and cost of living adjustments, or school district level levies that affect the funding that goes on at the local level.

22 Q. And how are WEA's positions with respect to ballot
23 propositions formed?
24 A. Once again, that's done by the membership at different
25 levels. They determine either the Board of Directors

[454]

1 level or the representative assembly level how they
2 feel about various issues.

* * * * *

[463]

19 Q. Now, I want to return to your testimony about the
20 importance of participation in ballot propositions and
21 specifically refer you to school levies. Do you have
22 a position with respect to whether or not the
23 Association should be active in school levies?
24 A. I do personally, as well as a member of the
25 organization and leader.

[464]

1 Q. Why is that?
2 A. I taught in Federal Way School District for 26 years,
3 and at one point in time in the '70s we had I think 21

consecutive levy failures, and I know what it's like to teach when you don't have the extra funding in your school district. Everything from having to have a stack of buckets in the room for when the roof leaked when it rained, to not having enough text books or up-to-date text books or materials to use with the students, and it was all because we didn't have the extra funding that was needed to provide these.

Q. Do you know approximately what the statewide average starting salary for teachers is today?

A. $26,750.

* * * * *

KRISTEEN HANSELMANN

[480]

Can you please state your name.

A. Kristeen Hanselmann.

Q. And what is your current position of employment?

A. I'm the Director of Political Affairs for the Washington Education Association.

Q. And how long have you held that position?

A. Since 1999.

* * * * *

[491]

Q. Since 1995 have there been some major ballot propositions that WEA has participated in?

A. Yes.

Q. Which would you consider to be the major?

A. In '96 there was Initiative 173, 177, one which was a voucher initiative, the other which was a charter school. More recently, there was Initiative 732 which was cost of living for school employees, and Initiative 728 which was a reduction in class size initiative.

Q. And with regard to 173, which one was that?

A. That was a voucher initiative.

Q. And what position did WEA take?

A. We were part of a coalition that opposed that initiative.

Q. And why did WEA oppose the initiative?

A. It went to the heart of impacting funding for education and the possible loss of funding, transfer of monies to private entities thus putting at risk public education employment.

Q. Would the result of its passage have impacted members

[492]

and fee payers in the same way?

A. Yes.

Q. And did WEA make contributions to that initiative?

A. They made contributions to the No Committee on 173.

Q. Thank you. With regard to Initiative 177, what was

that initiative?

A. That was a charter school or independent school

initiative.

Q. And what position did WEA?

A. WEA was part of a coalition opposing that initiative.

Q. And why did WEA oppose Initiative 177?

A. It had the impact of defunding education and putting

at risk education funding for existing programs and

staff.

Q. And would this -- okay.

So it put it at risk funding for staff, is

that --

A. Yes, and program.

Q. And would this initiative if it had passed had

impacted public education?
I'm sorry. Would the result of this initiative if it had passed impacted the members and fee payers in the same manner?
A. Yes.
Q. Did WEA participate in opposing this initiative?

[493]

A. Yes, they did.
Q. With regard to Initiative 728, what initiative is that?
A. 728 was a initiative to reduce class size, enhance extended learning opportunities for kids and support and increase professional development for employees.
Q. What year was that on the ballot?
A. 2000.
Q. And what position did WEA take with regard to Initiative 728?
A. The organization supported it.
THE COURT: Counsel, I think we're going to stop at this time and take our morning recess. We'll be in recess for the next 15 minutes.
(A recess was had.)
THE COURT: Let's press on.

BY MS. STRASBERG:

Q. I believe we just finished with Initiative 728 when we took a break and I had not asked you about Initiative 732 with regard to you describing what that initiative was.

A. That was cost of living for school employees.

Q. What position did WEA take in that initiative?

A. WEA was supportive of that initiative.

Q. Okay. And why did WEA support that initiative?

[494]

A. Because it directly related to compensation for school employees and for higher education employees.

Q. And this initiative passed; is that correct?

A. Yes, it did.

Q. And is the result of its passage to result in cost of living increases for members and fee payers in the same manner?

A. Yes, it will, subject to collective bargaining.

Q. And did WEA make contributions to support or oppose – did WEA make contributions to support that initiative?

A. Yes, they did.

Q. Thank you. With regard to Initiative 728, that initiative -- the class size initiative, that initiative passed; is that correct?

A. Yes, it did.

Q. And how -- what is the impact of this initiative on public education and education employees?

A. There are a number of provisions relating to class size and conditions of employment regarding professional development, extended learning, all of which impact and have to be -- its impact has to be bargained at the local level around the utilization of those monies and how they are going to impact the working conditions of employees.

Q. And does the result of its message impact members and

[495]

fee payers in the same manner?

A. Yes.

Q. And with regard to local associations when they get involved in levies, how is their position on local levies determined?

A. That's determined at the local association level.

* * * * *

[524]

Q. And internal communications that are put together by the -- what kind of information is sent to members that would relate to political matters?

A. It could be information on an initiative that impacts education employees or education, it could be information on a candidate, it could be information that encourages people to become an absentee voter.

Q. Could it be also include information that would encourage members to vote for or against a certain ballot proposition?

A. Yes, it could.

Q. And could it be sample ballots that are premarked?

A. No. We have not utilized that particular form of communication in my tenure in this position.

Q. Could it be written endorsements of certain candidates for election?

A. We do not endorse candidates, we recommend, and we do

inform our members as to our recommendations. What they do with them is between them and their ballot.

Q. So that's regarded as an internal communication?

A. Yes.

Q. So that's not reportable anywhere to the PDC?

A. No.

Q. But money is spent for that purpose?

[525]

A. Money is spent out of the Community Outreach Program for that purpose.

Q. Solely out of the Community Outreach Program?

A. In -- yes.

Q. Are there newsletters that you send to your membership?

A. We do have the "WEA Action" and that is not out of the Community Outreach.

Q. Does that newsletter ever take a position on an initiative or candidate?

A. Yes, it does report the position the Board of Directors has taken.

Q. So there is money spent out of the general fund on that newsletter?

A. Yes.

Q. You testified that the position of the WEA on ballot propositions is ultimately decided by the WEA Board of Directors; is that right?

A. Yes.

Q. And that prior to recommendation being made to the board, how are those recommendations -- are recommendations made to the board by staff as to what positions it takes?

A. Generally the recommendation's for positions first, both to discuss to the executive committee of the

[526]

organization and a recommendation to support or oppose a ballot proposition generally goes from the executive committee. This is after they have received an analysis from staff, and it is not unusual for staff to make a recommendation for their consideration.

Q. In coming up with recommendations, do staff or the executive committee ever inquire of agency fee payers

how they would like to or what position they would

like to take on a particular ballot initiative?

A. To my knowledge, no.

Q. Now, you talked about specific initiatives in 1996, No

on 173 and No on 177, excuse me, Initiatives 173 and

177?

A. Yes.

Q. And in 2000 Initiatives 728 and 732?

A. Yes.

Q. And I think you said with respect to Initiative 173

that the WEA opposed that initiative?

A. Correct.

Q. So was there any attempt to find out whether agency

fee payers agreed with that opposition?

A. Not to my knowledge.

Q. Do you think that there would be agency fee payers

that would not have agreed with that position?

A. I assume that some of our members may not have.

[527]

Q. And could the same be said for Initiatives 177, 738

and 732?

A. Yes.
Q. Are there -- I think you testified Initiative 732 is a
COLA, cost of living increase initiative; is that a
fair -- I don't know how you refer to it.
A. COLA is fine.
Q. And you said it affected members and fee payers the
same?
A. Yes.
Q. Did Initiative 732 provide for an increase in pay for
all of your members?
A. No, it did not.
Q. Who did it exclude?
A. We represent some higher education faculty at
four-year institutions which are not subject to
collective bargaining and are under a personnel board
system which -- and are deemed state employees, and so
as a consequence we did have some members that were
not covered by Initiative 732.
Q. And so fee payers in those organizations also would
not be covered?
A. I don't believe there's fee payers in those

organizations because they do -- only one has collective bargaining rights and there's no agency

[528]

fee.

Q. If an agency fee payer wrote the WEA and said I don't like the position you're taking, what would the WEA do with that?

A. Generally, like all correspondence, we basically indicate that the organization has taken a position what they feel is in the best interests of the majority, on behalf of the majority of educators.

* * * * *

[540]

Q. We talked a little bit about WEA-PAC. Can you just briefly describe what WEA-PAC is and what it does?

A. WEA-PAC is a membership organization that members of the WEA can join and it is a PAC devoted to dealing with candidates, state and local candidates.

Q. And is it, WEA-PAC, the organization that recommends a candidate?

A. Yes, it does.

Q. Does WEA recommend candidates?

A. No, WEA-PAC does.

[541]

Q. And does WEA-PAC make independent expenditures?

A. Yes.

Q. And does WEA make independent expenditures?

A. No.

* * * * *

THOMAS HEDGES

[552]

Q. Mr. Hedges, when your office engages in the Hudson process membership is under you, all the entities that are under you reflect basically the reproduction and the mailing of the Hudson packets?

A. That's correct.

Q. When you mail those you don't get return receipts, do you, from the post office or from the recipient?

A. No, we do not.

Q. And, in fact, you often do receive a number of them returned to the WEA undeliverable, don't you?

[553]

A. Yes, we do.

Q. So you can't say for a fact that all fee payers even receive the Hudson packet, can you?

* * * * *

A. If your answer is follow-up to the ones that are returned undeliverable, we do follow a process to ascertain a more current address from the one that the original mailing was sent to.

Q. Let me ask another question. Are you able to say that there is not a fee payer out there who does not receive a Hudson packet?

A. The question sounded like a double negative to me.

Q. It was a double negative. Are you able to say every single fee payer in a given calendar year receives a Hudson packet?

A. 100 percent?

Q. My question is, yes, 100 percent.

A. No, I'm not.

* * * * *

[554]

Q. You receive no verification from fee payers as to whether or not they have received and read the packet, do you?

8 A. No.

* * * * *

[556]

25 Q. And with respect to the Hudson packets that come back

[557]

1 as undeliverable, could you explain in any more detail

2 what efforts are undertaken to follow up with those

3 packets to try and get them to the fee payers?

4 A. The -- any undeliverables from the first mailing would

5 be researched and those individuals would be included

6 in the second mailing. . . .

* * * * *

VICKIE RIPPIE

[559]

6 Q. Would you please state your name.

7 A. Yes. My name is Vicki Rippie.

8 Q. And what is your current position of employment?

9 A. I am the Executive Director of the Public Disclosure

10 Commission.

11 Q. And how long have you held that position?

12 A. Since May 15 of 2000.

Q. And what position did you hold prior to that?
A. From August of -- August 28th of '99 to May 12th I was the acting Executive Director.
Q. And can you describe what your current responsibilities are?
A. Yes. The Executive Director is responsible for the day-to-day operations of the agency. I am the public records officer in charge of implementing the Commission's positions and decisions. I am also in charge of the enforcement and compliance effort, the disclosure effort in terms of making sure that documents are filed with the agency, are prepared, available to the public, and we have a public

[560]

education component as well.

* * * * *

[569]

Q. And Exhibit 163 I need. Could you identify what's been marked as Exhibit 162, please?
A. Yes, this is a letter from Steven O'Ban to Attorney

General Christine Gregoire dated August 11, 2000, regarding Notice of Violation of Public Disclosure Act (42.17.760) by Washington School Districts and WEA.

Q. And is this the -- did this letter come to your attention?

A. It was referred to our office for investigation from the Attorney General's Office, yes.

Q. And do you know approximately when it was received by your office?

A. Within a matter of days is the best I can do of it being received by the Attorney General's Office which appears to be dated August 14.

Q. And this is the document which gave rise to the litigation that we're here about today?

A. This letter constitutes what we consider -- what we euphemistically call a 45-day letter that is also known as a citizen action that's being filed pursuant

[570]

to 42.17.400, yes.

* * * * *

MICHAEL E. GOCKE

[595]

Q. Would you please state your name and spell your last name.

A. Michael E. Gocke, G-O-C-K-E.

Q. Your occupation?

A. I'm a partner in the accounting firm of Moss Adams, LLP. I'm a Certified Public Accountant.

Q. Mr. Gocke, could you please describe your educational and experience background?

A. I completed a Bachelor of Science in Accounting at Sacramento State College in Sacramento, California, in 1969. I completed a Master of Business Administration from Pacific Lutheran University in 1980. I completed a Master of Science in Taxation from Golden State University in 1984. I've been a Certified Public Accountant since 1973, and therefore each year have had continuing education requirements since 1973.

I've also have continuing education requirements as a
Certified Financial Planner since 1984, and as a
business appraiser. I hold a business appraisal
designation, a ABV, from the American Institute of

[596]

CPAs, and each of those has some annual continuing
education requirement.

Q. All right. Thank you.
Now, you were asked -- contacted initially by the
Washington Education Association concerning some
potential involvement in this case or your firm was;
is that right?

A. Correct.

Q. And then at a later time you were contacted by the
Office of the Attorney General?

A. Irene Cox of your office, if I recall.

Q. And you understood that the purpose of those contacts
were for a potential joint retention by the parties;
is that right?

A. Yes, sir.

Q. And ultimately you were told that the parties reached an agreement for a joint retention of your firm for purposes of this case; is that correct?

A. Correct.

* * * * *

[623]

THE COURT: I have no idea what bottom of the pool is, so you can clarify that?

MR. WENDEL: Explain that.

MR. GOCKE: Your Honor, what we had discussed was that if you looked at the nonchargeable activities that had been reviewed each year, with this as a byproduct of this Hudson rebate process, and the arbitrators had determined how much was chargeable, how much was nonchargeable, that if you look at the dues income, not the agency fee income, and if that dues income was greater than the amount of the nonchargeable activity, then none of the political activities could have been spent on -- from agency fee sources because the nonchargeable activities would have, in effect, been paid out of the dues income.

So the bottom of the pool as the question was phrased, is in effect what remains. And if you recall, I had testified that the political activities are actually a subset of the nonchargeable activities, so if the dues income exceeded the total amount of the nonchargeable activities, then it could not -- the

[624]

political activities could not have been paid out of agency fee sources.

* * * * *

Q. And what that assumes, see if I'm understanding that correctly.

A. This is the two pie theory?

Q. Right. We have a dues.

THE COURT: Are the pies going into the pool, is what you want to know?

Q. Soggy pies. So we're going to call the category of expenses chargeable, and we're going to call category of expenses nonchargeable, okay?

A. Correct.

Q. And we have a pie, and I don't pretend to be drawing a pie to scale or using actual percentages here, your

bottom of the pool theory says that some percent, let's say 75 just strictly for the sake of example, of a dues payers dollar is going to chargeable, and 25 percent of that dollar is going to nonchargeable,

[625]

right?

A. Well, at first blush it would look that way but you then have to factor in that some of the agency fee payers object and they obtain a refund of the nonchargeable portion and so that changes your pie slices slightly.

Q. What my question is the fee payers that don't object --

A. Correct.

Q. -- under your bottom of the pool theory if you've got enough chargeable expenses, chargeable expenses that exceed the amount you receive from nonmembers or fee payers, then you can apply 100 percent of the fee payer's dollar to the chargeable expenses?

A. In effect that's what occurring.

Q. Okay.

A. The equity of that is, that's a different question, but that's in effect what's occurring.

Q. And you're not offering an opinion that that is an equitable result?

A. I wasn't offering an opinion one way or another in terms of equity.

* * * * *

[628]

Q. Okay, you're right. Why did you propose that alternative?

A. Well, we thought it was a way of ascertaining fairly quickly and relatively inexpensively whether or not it appeared that there was a problem with potential political expenditures being paid out of the agency fees, and it was the type of test that could be done in several hours over multiple years, and if from our perspective if the -- as I indicated on direct examination, if the dues income was sufficient to cover the nonchargeable expenses, then there wouldn't be a problem.

Q. And it's your understanding that the items that are coded as Code 98 are included in that nonchargeable

[629]

allocation of expenditures; is that correct?

A. That's correct.

* * * * *

Q. If there were sufficient revenues to pay -- for member due to pay for all the nonchargeable expenses, what would this tell you?

A. Well, it would tell us that the agency fees couldn't have been used to pay for any of the nonchargeable activities and, therefore, couldn't have been used to pay for political activities.

Q. When you looked at the statute, which is on Page 2 of that letter --

A. Okay.

Q. -- under the word "expenditures," do you see 42.17.760?

A. Correct.

Q. And does that pretty much characterize your understanding of what the statute says?

24 A. Yes.

25 Q. Did you reach a conclusion as to whether or not the

[630]

1 statute, in your opinion, required that the fees and

2 dues be segregated, that the fees be segregated from

3 the dues?

4 A. Well, we looked at the statute and the statute's

5 silent on that, and concluded that in the absence of

6 it being silent that there wasn't an example I would

7 make, I didn't use this at the meeting when we all

8 met, it's not like an attorney's trust fund under the

9 IOTA, the requirements that go with that. This was --

10 these were not trust funds that had to be put into a

11 separate account.

12 Q. If you were told that in a given year the membership

13 dues amounted to over $16 million, the revenue from

14 membership dues amounted to over $16 million and the

nonchargeable expenditures were $4 million, what would be your conclusion with regard to your analytic procedure?

A. Well, with that hypothetical then the agency fees couldn't have been used for political activities.

Q. Thank you. Have you advised organizations how to set up record keeping in order to comply with statutes?

A. Yes.

Q. And if you were doing so with regard to RCW 42.17.760, would you -- would you advise the organization to set up a segregated account for agency fees?

[631]

A. If you wanted to -- the way I interpret the 760, you could put it into the general account, and because of this bottom of the pool theory, as long as you met that test it wouldn't be used on political activities. If you wanted to remove any question of that, then you would remember the last bullet in the recommendations

I was being asked about, or was it the second to the last, then you would keep it in that separate account and then on a monthly basis make a transfer to more clearly pay for everything that was qualifying expenses.

Q. And, in fact, your recommendations were based on the statement in Phase I review where you were requested to make a recommendations for accounting principles which would accurately track the use of agency fees or political expenditures?

A. That's true. And if you did that it very clearly tracks that, yes.

Q. But and look at language of 42.17.760 on its own.

A. It doesn't seem to be a requirement under 760.

* * * * *

[632]

Q. Let's talk about commingling, Mr. Gocke. Fees were commingled to your knowledge with dues in the general fund for the Washington Education Association?

A. That's true.

Q. And money from that commingled fund was used to make
political expenditures?
A. That's also true.
Q. And on an annual basis, the Association did this Hudson process and we already talked about like the pie chart where your dollar goes and they sent that out to fee payers; that's your understanding?
A. Correct.
Q. And on an annual basis if a fee payer objected or challenged we've learned, and I trust you understand they're issued a refund of the portion of that dollar that would otherwise have gone to those expenses?
A. By those expenses you mean the nonchargeable expenses which is a bigger group than the political, yes.

[633]

Q. Yes. Thank you for clarifying. And so is that statement and that activity in refunding money to fee payers in the sense that if we didn't refund it we would be spending it on these activities consistent with a later claim that it wasn't spent on those

activities for a fee payer who didn't object and who
didn't get a refund.
MS. STRASBERG: Object to the form of the question as argumentative.
THE COURT: I'll allow the answer, overruled.
A. If you wouldn't mind rephrasing it, you lost me at the
end of the first phrase there, phase.
Q. Sorry, I'll try. Is it consistent to say on one hand here's how the dollar is spent --
A. With the pie chart for the Hudson calculation --
Q. Yeah.
A. -- and then to give a portion of that back.
Q. And then come along later and say oh, well, even though we said we were going to spend it if you didn't
object we didn't spend it after all, isn't that two different statements?
A. I don't know if it's two different statements and I don't know if there's a requirement for consistency.
I see your point. You're basically saying my bottom
of the pool theory flies, is inconsistent with the

[634]

Hudson rebate process.
Q. Don't you agree with that?

A. Well, true.
Q. They're not consistent with one another?
A. But I don't know if there's a requirement for that consistency, the --
Q. Let's talk about it another way. We've gone through the two pies for fees and dues. If we made a third pie for the fee payer who get a refund --
A. Oh,
Q. -- wouldn't the fee payer get that 25 percent as a refund?
A. Correct.
Q. And isn't that what the Education Association did?
A. Yes.
Q. And the fee payer who doesn't make an objection that fee payer's money is spent differently from how the objecting fee payer's money is spent?
A. In effect, yes. Although --
Q. Isn't it?
A. I don't know if -- the way you said that, that the nonobjecting fee payer's money is spent differently. That tends to imply that each dollar that's paid in

whether it's from dues or from an agency fee payer is, in effect, buying or paying for a little slice of everything.

Q. In a commingled fund isn't that the way it works?

A. In a commingled fund you have the potential for that occurring, but I don't think that's what occurred with my bottom of the pool theory here.

* * * * *

JAMES SEIBERT

Q. Mr. Seibert, what is the extent of -- what has been the extent of WEA's efforts with respect to the Hudson process over the years since you first began it?

A. Well, it's a very labor-intensive process for our staff, gathering the information to put together in the Hudson packet, to do the mailing usually twice each year, getting it out to several thousand individuals. It has to be reviewed every year to see

if any changes are necessary. We have several staff people that are involved in the process of just the mechanics of getting it together, getting it out, meeting the deadlines, time requirements of it. It's a considerable responsibility for the organization.

Q. And can you give us an estimate as to how many staff and officials of the WEA are involved on an annual basis in this process?

A. Well, at one stage or another in the process, there are probably as many as 15 people that have something to do with this, either in the processing of it, the printing of it, the mailing of it, the review of it, the discussions regarding what the content would be.

* * * * *

LAIRD S. VANETTA

[743]

Q. Would you state and spell both of your names for the record, please.

A. Laird S. Vanetta, L-A-I-R-D V-A-N-E-T-T-A.

Q. And what is your profession or occupation?

A. I'm a Certified Public Accountant.

Q. And can you give us your background in employment history, your educational background and employment history?

A. I have a Bachelor of Accounting from Central Washington University. I graduated in 1980, started working for what was then Tremper Slater & Company, is now Tremper & Company, LLP, and I have been with that firm in excess of 20 years. I'm now a partner with the firm, and I have been a partner with the firm for approximately 10 years.

Q. And what is Tremper & Associates?

A. Tremper & Company, LLP, is a CPA firm that specializes in closely-held corporations, nonprofit organizations, and individual taxes.

* * * * *

[765]

A. The next row is a math calculation again. It's the

amount of the total reported political expenditures
divided by total expenditures for -- for instance in
the year 2000 the total reported political
expenditures were 3.2 percent of the total
expenditures, and then in '99 they were 1.25 percent
of the total expenditures. '98 they were .92 percent.

Q. So less than one percent?

A. Less than one percent of the total expenditures. In
'97 they were 1.82 percent of the total expenditures,
and then again in 1996 they were .52 percent or less
than one percent of the total expenditures. Again,
those are adjusted for the NEA reported amounts.

* * * * *

[767]

Q. All right. Fine. Thank you, Mr. Vanetta. You can
resume the stand if you will.
Based on the work that you have done that is
reflected in Exhibit 156, can you describe for the

Court your opinion with respect to WEA's use of or
nonuse of agency fees for political purposes?
A. It is my opinion that there are sufficient additional
revenues besides either dues or fee revenues to
adequately pay for all of the reported political
expenditures.
Q. Okay. And specifically to what other fund sources do
you refer?

[768]

A. The -- either the interest revenues or the other
revenues.
Q. All right. And --
A. But as it turns out the interest revenues would be
sufficient in and of themselves to have -- be able to
make that determination.
Q. Fine, thank you. Were you present when Mr. Jeff
Baliban testified?
A. Yes, I was.
Q. And do you concur with his opinions?
A. I do not, no.
Q. Why not?
A. I don't concur with his conclusions regarding the

commingling of funds. I am unable to find any accounting that supports that theory of commingling of funds, and the fact that once you commingle funds you have to provide a pro rata or proportional amount of those funds for each expenditure that is made.

Q. And when you spoke of the pro rata or proportionality premise, to your knowledge is there any accounting standard or other industry guide that would support his proportionality conclusions?

A. Not to my knowledge.

Q. And you, in fact, did some research to determine?

A. I have done some fairly extensive word searches

[769]

looking for any type of accounting support for that theory, and I have been unable to find that.

* * * * *

[774]

Q. And do you have any opinions with respect to Mr. Gocke's testimony?

A. I do believe that his opinion is fairly similar to mine. He is taking, if I understand his opinion

correctly --

MR. WENDEL: Your Honor, I'm going to object. I don't think this is relevant in terms of validating or nonvalidating. If there are differences that are the same, that's fine, but it is character evidence in some other guise.

THE COURT: I think I understand your objection. I'll overrule it based upon this is an expert opinion and I will allow him to compare or contrast his opinion with that of other experts.

[775]

A. I believe that his approach is fairly similar to mine. He's taking a larger broad brush approach, if I'm understanding his approach correctly, and saying that the -- as long as there is are sufficient dues revenues to cover the amount of nonchargeable expenditures then agency fees were not spent on political purposes, and the premise being that the political expenditures are a subcategory of nonchargeable expenses. I'm taking essentially the same approach and

saying that besides dues revenues, if you take interest revenues, for instance, or other revenues and use them to compare against the reported political expenditures, then there are funds available to have made all of those expenditures without requiring the use of either dues or agency fees.

And the other part that I didn't notice was that he was unable to find any evidence of the commingling approach.

* * * * *

[778]

THE COURT: Cross-examination.

MR. WENDEL: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. WENDEL:

Q. Mr. Vanetta, you said that the WEA had been your client for about 20 years?

A. That's correct.

Q. And --

A. They have actually been our client for longer than

that. I think I said that I worked on them for about

that.

Q. And you expect them to remain your client for the

foreseeable future, I take it?

MS. LONNQUIST: Objection, calls for speculation.

THE COURT: Overruled. You may answer.

A. I would expect that but I don't have a way of really

controlling that. It's up to an annual review by

them.

Q. Your experience as an expert testifying in court is on

behalf of the WEA, correct?

A. Yes.

Q. Now, the illustration you provided in exhibit, gosh, I

lost track of the number, 156, that is not something

that WEA planned to do, correct?

A. For me to prepare that exhibit?

[779]

Q. No. The process of paying for political expenditures

out of these so-called other revenues is not something

that WEA planned to do during the years in question?

A. I cannot say that they didn't plan that.

Q. You're unaware, in fact, of any -- let me be precise.

Prior to the present litigation, you're not aware, are

you, of any conversations, recommendations, policies

within WEA or between WEA and others concerning

methods that may be used to comply with RCW 42.17.760,

are you?

A. Not prior to the current litigation.

Q. And it is, in your opinion, is it that in fact fees

were not used to pay for these political expenses?

Let me state that without the negatives.

A. Please.

Q. Is it your opinion that fees were not used to pay for

the political expenditures?

A. My opinion is that there were sufficient other sources

of revenue to have paid for those fees.

Q. So you are not saying that the fees were not used,

correct?

22 A. I am not saying that the fees were not used.

* * * * *

[783]

4 A. For my -- for purposes of my analysis and conclusion I

5 utilized the amounts that were reported on the PDC

6 reports, I didn't really question.

7 Q. You didn't apply any definition to political

8 expenditures for purposes of your analysis here, you

9 just used what were summarized for you out of the PDC

10 reported expenditures?

11 A. That's correct.

12 Q. Do you have analyzed what particular expenditures were

13 reported to PDC were included in your analysis?

14 A. I didn't get into that detail, no.

15 Q. You said you looked at some but not all of the actual

16 reports made to the PDC, right?

17 A. That was in the prior litigation. That was not as

18 part of this particular.

19 Q. So you didn't look at the reports at all for this

20 particular case, did you?

21 A. Correct.

22 Q. Somebody gave you a summary of those?

A. Yes.
Q. And you have no knowledge as to which items off of those PDC reports were totaled for you, do you?

[784]

A. I do not know.
Q. And you don't know whether all of the political expenditures reported on the PDC reports were included within the numbers given to you, do you?
A. I do not know that. I have not done audit procedures of those amounts.
Q. And outside of the L2 and the L3s, the PDC reports, do you have an opinion as to whether there are other political expenditures as well?
A. I do not.
Q. So you do not have the opinion as reflected on Exhibit 156 that the reported political expenditures are, in fact, all of the political expenditures made by the WEA during the fiscal years in question, do you?
A. That is correct.
Q. And you have no opinion that there are not any other political expenditures, correct?

A. The only opinion I have is that I utilized the report that was given to me as a basis for my conclusions.

Q. The other revenues that you're talking about, part of the other revenues are interest revenues. Have you divided those interest revenues up as to what accounts the interest was derived from?

A. I think I might. The line "other revenues" on my schedule does not have interest revenues in it. The

[785]

line called "interest revenues" would be where those would be.

Q. And that interest revenues is derived from various accounts?

A. That is correct.

Q. Including accounts that hold fees, agency fees, into which agency fees were deposited? Let me put that it way.

A. Yes.

Q. Are you able to account for or deduct for the interest revenues line item on Exhibit 156, those interest revenues that would be attributable to agency fees?

A. I have not tried to do that, no.

Q. And you cannot quantify the interest revenues that may have been derived from accounts or balances that do not include agency fees, correct?

A. That is correct. Although I believe that there -- that you could do that if you really wanted to, I just didn't do that.

Q. You did not do that and you cannot say, then, that there were sufficient interest revenues derived from balances that did not include agency fees to pay for the political expenditures in any of the years you've listed in Exhibit 156; isn't that right?

A. I did not do that analysis, right.

[786]

Q. And the "other revenues" column you've included various items including NEA money that is given to the

WEA, correct?

A. Yes.

Q. And NEA money, as you're aware, is often designated for a particular purpose, correct?

A. Correct.

Q. And if that money is designated for a particular purpose that is not included within the total of political expenditures that you've reported on Exhibit 156, then it would not be appropriate to use that money for those political expenditures, would it?

A. If it was not specifically deemed for those purposes, that would be true.

Q. And so there is likely to be NEA money included in your other revenues that is designated for purposes other than these total reported political expenditures, wouldn't you agree?

A. Yes.

Q. There is also revenue from advertising for the Action Newsletter?

A. Yes. That number is very small.

Q. And that number is not great enough to offset the cost

of producing that newsletter, is it?

A. I don't know the answer to that.

* * * * *

[790]

Q. You do not make an assumption, do you, there is no member dues used to pay for these political expenditures, correct?

A. I did not make that assumption.

Q. Your analysis, in fact, ignores the question of whether or not fees and dues are used in a proportional manner; wouldn't you agree?

A. Yes.

* * * * *

[820]

Q. Let's go away from the matching principle. I just want to know about your whole analysis.
You didn't draw any conclusion as to whether or how fee payer money was spent, correct?

A. Correct.

Q. And you are not saying, are you, that fee payer money wasn't used for political expenses?

A. I was not saying that.

* * * * *

HEARING ON INJUNCTION 11/15/01

* * * * *

[74]

MR. WENDEL: I should note, if I may, at this point that it may not leap out, but in reading this injunction there is specifically no mechanism provided in here for the WEA to go forward and obtain affirmative authorizations. In fact, it's our appreciation that the WEA is not going to do that,

[75]

that they simply intend to go through the refund mechanisms that we're about to discuss. We have no grievance with that. If the WEA were to choose to go forward and seek affirmative authorizations, then I think that the definition in the summary judgment is sufficient.

THE COURT: Okay. That's a point well taken. I don't see any argument about that, so I think you've made the record clear about how this appears. So is there any issue about that, Ms. Strasberg?

MS. STRASBERG: No.

THE COURT: Let's go ahead, then.

MS. STRASBERG: Under 2(a), (b), (c), (d), (e), most of the rest of the -- up until page, the next two pages at least, until we get to (e)(ii), we have agreed upon and we went through some negotiations to come up with a method and a plan for either doing a refund for the next two years or what other system could accommodate an advanced rebate for the following years, and so I don't think that there's any dispute regarding those. I thought I just underlined the case.

THE COURT: I think *Hudson* was underlined in both. I think that's only a method of citing *Hudson*. I don't believe there's a difference there.

[76]

MS. STRASBERG: That's what I thought.

MS. LONNQUIST: Okay.

* * * * *

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WEA REVENUES AND EXPENDITURES 1996-2000

Fiscal year ended ⟹	2000	1999
Total revenues	$ 20,256,944	$ 19,428,547
Estimated agency fees	$ 947,648	$ 824,704
Percentage of total revenues	**4.68%**	**4.24%**
Total expenditures	$ 19,030,059	$ 19,593,111
Increase (decrease) in net assets	$ 1,226,885	$ (164,564)
Total reported political	$ 609,543	$ 245,135
Percentage of total expenditures	**3.20%**	**1.25%**
Total year end cash balances	$ 8,102,810	$ 7,274,313
Dues revenues	$ 17,115,316	$ 16,421,928
Interest revenues	$ 1,204,268	$ 908,366
Other revenues	$ 1,937,360	$ 2,098,553
Community Outreach revenues (included in dues total)	$ 776,763	$ 428,359

*Excludes $410,000 of NEA funded political expenditures.

Prepared by Laird Vanetta, Certified Public Accountant

1998	1997	1996	Totals
$ 18,669,284	$ 19,017,715*	$ 17,368,877*	$ 94,741,367
$ 847,470	$ 807,044	$ 636,295	$ 4,063,161
4.54%	4.24%	3.66%	4.29%
$ 17,340,877	$ 17,711,107*	$ 17,141,908*	$ 90,817,062
$ 1,328,407	$ 1,306,608	$ 226,969	$ 3,924,305
$ 159,606	$ 321,627	$ 89,792	$ 1,425,703
0.92%	1.82%	0.52%	1.57%
$ 8,055,289	$ 6,620,372	$ 5,006,842	
$ 16,034,783	$ 15,798,784	$ 14,692,181	$ 80,062,992
$ 991,273	$ 838,313	$ 784,869	$ 4,727,089
$ 1,643,228	$ 2,380,618*	$ 1,891,827*	$ 9,951,586
$ 748,705	$ 742,454	$ 622,225	$ 3,318,506

[WEA 002594]

WEA Logo

WEA Letterhead

TO: Certificated and AHE Agency Fee Payers

FROM: James S. Seibert, Executive Director //s//

DATE: September 15, 2000

RE: 2000-01 AGENCY FEE

State statutes, RCW 41.59.100 (certificated) and RCW 28B.52.045 (AHE) allow your Local Education Association, an affiliate of the Washington Education Association (WEA) and the National Education Association (NEA), to negotiate an agency fee provision in a collective bargaining agreement. This law states that the school or college district may deduct (and forward to the education association) from the salary of those who choose not to become Association members an agency fee equal to the amount of dues paid by Association members.

The amount of the WEA membership dues for the 2000-01 school year is $287.00 plus $12.00 dues for political education. Agency fee payers, however, do not pay the $12.00 dues devoted to political education. WEA members may choose to pay, in addition to WEA dues, $12.00 per year for contribution to the WEA Political Action Committee, WEA-PAC. These monies are used for state and local elections, supporting candidates. No agency fees go to WEA-PAC. As an agency fee payer, the WEA-PAC contribution will not be deducted from your paycheck and you will not be asked to contribute to WEA-PAC.

WEA members pay dues to WEA, a Local Association, a UniServ Council, and the National Education Association (NEA). This is because in our experience, the multi-level structure best enables the Association to provide representational services most efficiently without overlapping.

In addition to the WEA agency fee, you will also be required to pay an agency fee to the NEA, and, if they chose to collect one, to your Local Association and UniServ Council. The amount of Local dues can be ascertained by referring to Appendix A, which lists locals in alphabetical order. The amount of UniServ Council dues can be ascertained by referring to appendix B, which lists councils in alphabetical order.

[WEA 002595]

The amount of the NEA dues in the 2000-01 school year is $123.00; no dues go to the NEA-Fund for Children in Public Education (NEA-FCPE). NEA members may choose to pay, in addition to dues, $12.00 per year as a contribution to the political fund, NEA-FCPE. These monies are used to contribute to federal political campaigns for pro-education candidates. No agency fees are directed to NEA-FCPE; as an agency fee payer, the NEA-FCPE contribution will not be deducted from your paycheck and you will not be asked to contribute to NEA-FCPE.

The agency fee pays for many important services of benefit to you; the following is a partial list of such services.

1. The Association represents you in your relationship to your employer.

2. Association staff or leaders bargain a collective bargaining agreement on behalf of all members of your bargaining unit; that collective bargaining agreement controls your wages, hours and other terms and conditions of employment.

3. Should the school district violate the collective bargaining agreement in its treatment of you, the Association can file a grievance on your behalf.

4. If you are called in for a disciplinary interview with your supervisor or other administrator, you may request Association representation during the interview.

5. WEA negotiates with insurance companies, such as Blue Cross/Blue Shield, so that such companies will design insurance packages to meet the unique needs of school employees, and so that such packages will be marketed to school districts at the lowest possible price.

6. WEA sponsors many courses and workshops to train local leaders to protect the rights of members and agency fee payers.

This is not an exhaustive list of services you receive from WEA, your Local Association, your UniServ Council and NEA.

There are certain services available to members which you will not receive as an agency fee payer. One of these is the Educators Employment Liability Insurance Policy. This policy provides up to $1,000,000 insurance if a member is sued on the basis of employment related activities. Under certain circumstances, it also provides up to $35,000 to pay attorney's fees if a member is charged with a crime related to employment. Additionally, WEA members receive a discount on

personal legal services, such as wills, probate, domestic relations, and real estate matters; agency fee payers do not receive this discount. Moreover, pursuant to the terms of the WEA Legal Defense Policy, WEA may provide an attorney to defend its members when their

[WEA 002596]

employer seeks to discharge or non-renew; agency fee payers are not entitled to eligibility for legal services.

If you as an agency fee payer object to the Association spending any part of your agency fee on political or ideological activities not related to collective bargaining or contract administration and enforcement, or on services which agency fee payers do not receive, you will *not* be charged for these activities and services. You will, however, *be* charged for expenditures for activities related to bargaining, contract administration and enforcement, and improving your working conditions. A list of items we view as chargeable and items we deem nonchargeable is set forth in Appendix C.

You have three options: (1) you may pay the full amount equal to dues paid by members; (2) you may object to use of your agency fee for nonchargeable activities but accept the Association's determination of the amount of the fee that is chargeable as is set forth in this letter; or (3) you may choose to object to the use of your agency fee for nonchargeable activities and challenge the Association's calculation of the amounts that are chargeable and nonchargeable, and/or our characterization of items as chargeable or nonchargeable, before an impartial arbitrator. If the third of these options is chosen, the Association bears the burden of proving to the arbitrator that any particular expenditure was chargeable to agency fee payers.

You may object by notifying James Seibert in writing at the following address:

James Seibert, Executive Director
Washington Education Association
33434 Eighth Avenue South
Federal Way, Washington 98003

The objection must contain the following information:

1. Your name, home address, school and home telephone numbers.
2. The type of position in which you are employed (i.e., community college faculty, K-12 teacher, etc.).
3. Whether you are employed part time, full time, or as a substitute.
4. The name of the school district by which you are employed and the name of the WEA affiliate which is the collective bargaining representative for the bargaining unit in question.

[WEA 002597]

5. If you wish to challenge the Association's calculation of the amounts that are chargeable and nonchargeable, or our characterization of items as chargeable or nonchargeable, your objection letter must state that you wish to "*challenge*".

If such written objection has not been postmarked by October 16, 2000, you will waive your ability to object.

Only a single general statement of objection and/or challenge is necessary to object to and/or challenge the WEA agency fee, the NEA agency fee, the Local agency fee and the UniServ Council agency fee.

In considering whether you wish to object to the amount of the fee, please examine the following documents:

1. *Appendix D.* The description of the WEA expenditure budget for the 1998-99 fiscal year.
2. *Appendix E.* WEA chargeable and nonchargeable expenditures by budget area or 1998-99.
3. *Appendix F.* The audited statement of WEA expenses in the 1998-99 fiscal year, which includes the auditor's review of the chargeable/nonchargeable calculations.
4. *Appendix G.* How WEA calculates its agency fee.
5. *Appendix H* (if applicable). If your UniServ Council is seeking to collect an agency fee: 1) A declaration from an officer or staff member of the Council, explaining the operation of the Council and its financial records, and incorporating the Council's 1998-99 year-end financial statements, including its breakdown of expenditures into chargeable and nonchargeable categories, and; 2) an independent audit of the Council's 1998-99 expenditures.
6. *Appendix I* (if applicable). If your Local Association is seeking to collect an agency fee, enclosed are: (1) a declaration from an officer of your Local Association, incorporating and explaining its 1998-99 financial and time keeping records, including its breakdown of expenditures into chargeable and nonchargeable categories, and; 2) If your Local has more than 850 members, an independent audit of LEA's 1998/99 expenditures. Local Associations with more than 850 members include:

[WEA 002598]

Bellevue EA
Edmonds EA
Everett EA
Evergreen EA
Federal Way EA
Highline EA
Kent EA
Lake Washington EA
Northshore EA
Puyallup EA
Seattle EA
Spokane EA
Tacoma EA
Vancouver EA

7. *Appendix J.* NEA cover memorandum.

8. *Appendix J-1.* NEA chargeable and nonchargeable audited expenditures for the 1998-99 fiscal year.

9. *Appendix J-2.* The audited NEA financial statement as of August 31, 1999 and 1998. This is an independent auditor's statement of expenditures made by the NEA.

If your local association is seeking to collect an agency fee, the percentage of local dues that an objector will pay differs depending on whether the association has more or less than 850 members. If your local association has *more* than 850 members, an objector will pay the actual percentage of local dues identified as "chargeable" in the enclosed local association declaration. If it has *less* than 850 members, an objector will pay WEA's chargeable percentage of local association dues as an agency fee, or the actual percent of local dues identified as chargeable in

the enclosed declaration, whichever is less, unless that local association had an audit done of its 1998-99 expenditures. If an audit was performed (in which case the audit report is enclosed), an objector will pay the actual percentage of local dues identified as "chargeable" in the enclosed local association declaration.

The agency fee charged by the UniServ Council is the percentage of dues identified as chargeable in the enclosed council declaration.

For 2000-01, the agency fee charged by WEA is 75.7% of dues.

For 2000-01, the agency fee charged by NEA is 60% of dues.

[WEA 002599]

In March of 1994, WEA presented evidence to an arbitrator to justify the application of WEA's chargeable percent to its councils and locals. At the arbitration, WEA presented evidence of the expenses of a number of local associations. The arbitrator ruled that WEA could use WEA's chargeable percent to calculate the chargeable fee of those locals because:

> *The evidence at the hearing made it clear that the Locals . . ., because of their basic mission, must spend at least as much time, if not more, on representational issues. The staff and elected officers of these organizations must spend their time meeting with employer representatives to discuss issues of employee concern. They also spend a great deal of time meeting with individual employees with accusation, complaint, or grievance. And, as stated, they spend virtually no time in the most significant non-chargeable areas, being*

political action and public relations. I agree with the Associations (keeping in mind the Hudson admonishment that "absolute precision" is not required) that the local presumption option, which has been endorsed by some courts, is a valid alternative.

Accordingly, that arbitrator ruled that each of the locals could use WEA's chargeable percent. Four other arbitrators have also permitted the Association to use WEA's chargeable percent to estimate the locals' agency fee in this notice. In addition, use of WEA's chargeable percentage to estimate the agency fees for objectors in locals with fewer than 850 members was approved in 1998 by the U.S. District Court (W.D. Wash) as part of a settlement of a class action lawsuit.

Please examine the enclosed material and reflect for a moment on the services that the Association provides agency fee payers. I am confident that if you do so, you will agree that the Association delivers services worth the full amount of Association dues.

Enclosures

g:af/00-01/Hudson notice/certahe1Hudson cover letter.doc

[WEA 002624]

Appendix C

Category Code Descriptions	
Chargeable Activities (If uncertain, err toward categorizing as nonchargeable.)	**Allocated Activities**
Code Description	**Code Description**
10. Activities related to collective bargaining, contract administration and enforcement, including grievance processing and arbitration, working conditions, employee rights and job security, and research related to any chargeable activity.	61. Leaves, holidays, office closures. 62. Staff meetings. 63. General office work, trainings or meetings that cannot readily be separated into chargeable and nonchargeable components.
11. Preparation for strikes and activities undertaken in connection with lawful strikes.	**Nonchargeable Activities**
	Code Description
23. Revitalizing locals and members; maintenance of membership; organizational development. Does not include activeities that serve only the purpose of recruiting new members, persuading existing members to	96. Donations. 98. Other nonchargeable activities: • Support of nonchargeable activities. • Lobbying, including

Category Code Descriptions	
Chargeable Activities	**Nonchargeable Activities**
retain their association membership, or organizing nonmember employees. 24. Instructional and professional development. 25. Association conventions and governance meetings. 26. Training and meetings related to chargeable activities. If a portion of an otherwise chargeable training or meeting is devoted to nonchargeable matters, separate out the nonchargeable time and put it in Code 98, or if separation is not feasible, put the entire training or meeting in Code 63. 32. Communicating information to members or fee payers related to any chargeable activity.	lobbying state agencies. • Meetings and trainings (or portions thereof) not related to chargeable activities. • External public relations. • Internal communications regarding nonchargeable activities. • Litigation or research not related to Association's duty as exclusive bargaining agent or organizational maintenance. • Political or ideological activities supporting or opposing a particular candidate or party or initiative; activities to influence an election; activities related to levies, taxes, school funding, state or federal policy. • Organizing and recruiting non-members, and administrative or legal proceedings re-

Category Code Descriptions	
Chargeable Activities	**Nonchargeable Activities**
33. Activities supporting chargeable activities or needed to maintain Association as an entity. 34. Scholarships and awards (if available to fee payers or their children). 35. General office work related to chargeable activities. See instructions for Code 26.	lated to same; unit clarifications or representation elections; defending against efforts by other unions to represent units now represented by the Association. • Insurance protection and other member benefits not available to agency fee payers. • Student WEA, WEA-R. • Operation of political committee. • Voter registration. • Activities related to unlawful strikes. Put preparation for strikes, whether lawful or unlawful, in category 11. • General office work not related to chargeable activities.

APPENDIX F

Member of
American Institute of
Certified Public
Accountants

TREMPER & CO., LLP
Certified Public Accountants

100 W. Harrison Street, Suite 300
Seattle, Washington 98119-1165
(206) 285-4456
Fax (206) 285-5456

Member of
Washington Society of
Certified Public
Accountants

INDEPENDENT AUDITOR'S REPORT ON ADDITIONAL INFORMATION

To Mr. James Seibert, Executive Director
And the Executive Committee of the
Board of Directors
Washington Education Association
Federal Way, Washington

Our report on our audit of the basic financial statements of the Washington Education Association as of August 31, 1999 and for the year then ended, appears on page one. That audit was conducted for the purpose of forming an opinion on the basic financial statements taken as whole. The accompanying summary schedule of agency fee chargeable and nonchargeable expenditures for the year ended August 31, 1999 is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

//s// [Tremper & Co., LLP.]

Certified Public Accountants

August 1, 2000

WASHINGTON EDUCATION ASSOCIATION

SUMMARY SCHEDULE OF AGENCY FEE CHARGEABLE AND NONCHARGEABLE EXPENDITURES — *FOR THE YEAR ENDED AUGUST 31, 1999*

	Chargeable Expenditures	Nonchargeable Expenditures	Total Expenditures
Program Area:			
Governance and Administration	$ 2,137,321	$ 613,763	$ 2,751,084
Public policy center	---	1,305,407	1,305,407
Advocacy center	5,113,706	577,804	5,691,510
Information center	1,368,320	684,626	2,052,946
Learning and education center	1,092,160	22,651	1,114,811
Support services center	3,882,827	936,268	4,819,095
TOTAL CHARGEABLE AND NONCHARGEABLE EXPENDITURES	$13,594,334	$ 4,140,519	$17,734,853
EXPENDITURE PERCENTAGES	76.7%	23.3%	
Community Outreach			497,043
NEA and Grant Reductions			1,370,941
TOTAL BUDGETARY EXPENDITURES			$ 19,602,837

FILED
DEC -3 2001
SUPERIOR COURT
BETTY J. GOULD
THURSTON COUNTY CLERK

The Honorable Gary R. Tabor

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

State Of Washington ex rel. Public Disclosure Commission, Plaintiff, v. Washington Education Association, Defendant.	No. 00-2-01837-9 PERMANENT INJUNCTION

The above cause having come on regularly for trial on the 14th day of May, 2001, before the court sitting without a jury, plaintiff having been represented by Christine O. Gregoire, Attorney General, D. Thomas Wendel, Assistant Attorney General, and Richard Heath, Special Assistant Attorney General, and defendant having been represented by Judith Lonnquist, Harriet Strasberg, Michael J. Gawley, and Aimee Iverson, and evidence both oral and documentary having been introduced, the case argued, and the Court having entered a letter Opinion on July 30, 2001 concluding that defendant violated RCW 42.17.760 and that an injunction should be entered, and the Court having considered further arguments and pleadings of the parties, now, therefore,

IT IS HEREBY ORDERED that defendant Washington Education Association shall implement the following measures to comply with RCW 42.17.760 immediately and within 30 days of the date of this Order complete the following activities, unless a different date or time period is otherwise specified for a specific activity in the terms of this Order below:

1. For each fiscal year from the present, WEA shall identify, record, and quantify all expenditures and contributions to influence an election or operate a political committee (§ 760 expenses), which shall include all political advertising expenditures, as well as direct and in-kind contributions, internal political communications, and independent expenditures. § 760 expenses do not include expenditures made by WEA from its Community Outreach Program, which does not utilize agency shop fees. Activities to accomplish this shall include the following:

a) Revise Weekly Activity Reports (WAR Reports) to include the Category Description items enumerated 91 and 93, as shown on Exhibit 1 hereto, in the activities reported on WAR Reports, and instruct and require employees who keep WAR reports to report time on activities encompassed in Categories 91 and 93 and provide supervisory review of WAR reports within a reasonable time following their completion;

b) For those employees who do not keep WAR Reports and who engage in activities that meet the description of § 760 expenses, WEA shall instruct and require those employees to keep Political Activity Reports (PAR Reports) and to report time on such activities in their PAR Reports, whether or not those activities are reportable to the PDC.

c) Record for each advertising expense for political purposes or to influence an election, a general description of the content, the identity of the candidate or ballot proposition to which the advertising relates, if any, and take such other measures as are necessary to identify and quantify political advertising expenses;

d) Record expenses and salaries associated with internal communications to enable identification and quantification of all expenses of any internal communications to support or opposes ballot propositions or candidates or otherwise are made to operate a political committee or influence an election;

e) Record all direct and in-kind contributions to political committees or to influence elections;

f) For each WEA fiscal year, generate a written analysis of WEA's § 760 expenses, which produces both the total dollars that were used for these purposes and the percentage of WEA's total expenditures that were used for these purposes;

g) Obtain a certification of an independent audit that satisfies generally accepted accounting and auditing standards of each fiscal year's analysis of all of WEA's § 760 expenses;

2. WEA shall return to all agency fee payers who have not affirmatively authorized (as defined by the Court's ruling on Plaintiff's Motion for Summary Judgment) the use of their fees for expenditures or contributions to influence an election or operate a political committee a percentage of the annual fees charged to the fee payer, in the following manner:

a) For WEA fiscal years 2001 – 2002, and 2002 – 2003, issue a refund or rebate in an amount equal to eight percent (8 %) of the agency fee charged annually by WEA to the fee payer for each fiscal year, and until the refunds or rebates are made, maintain in a segregated account an amount equivalent to eight percent (8 %) of all agency fees received by the WEA; however, no refunds or rebates need be given to fee payers who are objectors or challengers under WEA's *Hudson* process and receive a refund of the non-chargeable portion of their fees inclusive of the portion related to WEA's political expenditures;

b) For WEA fiscal year 2001 – 2002, the refund or rebate to agency fee payers shall be mailed on or before January 15, 2002. Another mailing of rebates will be mailed on or before April 15, 2002 to capture any fee payers employed during the 2001 – 2002 fiscal year, but who were unknown to WEA before December 31, 2002;

c) For WEA fiscal year 2002 – 2003, the refund or rebate to agency fee payers shall be mailed to all known agency fee payers by November 15, 2002. Another mailing of rebates will be mailed on or before April 15, 2003 to capture any fee payers employed during the 2002 – 2003 fiscal year but who were unknown to WEA on November 15, 2002.

d) For fiscal years 2001 – 2002 and 2002 – 2003, any refunds or rebates that cannot be conveyed to agency fee payers because the rebates or refunds are returned to WEA undelivered, or which WEA

cannot mail, or for any other reason, shall be retained until the end of the subject fiscal year by WEA in a segregated account, and if they remain unclaimed and undeliverable by August 31 of that fiscal year, the unclaimed or undeliverable funds so retained shall be distributed to the WEA Children's Fund, to the American Red Cross, or to Northwest Harvest.

e) For WEA fiscal year 2003 – 2004, and every fiscal year thereafter, WEA shall reduce the agency fees chargeable to agency fee payers from an amount equivalent to 100 percent of the member dues by

(i) the percentage of the WEA's total expenditures that are analyzed to have been used for § 760 expenses in the second fiscal year prior, e.g. reductions in 2003 – 2004 shall be based upon WEA's analysis of 2001 – 2002 expenditures,

(ii) plus a cushion of 3 percent of the annual agency fee for the respective fiscal year, in order to take into account the annual variations that may occur in WEA's § 760 expenses, the short term agency fee payer who may not be employed long enough to benefit from averaging of long term variations, and negligible errors in either calculations or organization expenses.

f) Separate refunds or rebates will not be issued to fee payers who object or challenge and receive a rebate equal to the non-chargeable percentage of WEA expenditures, pursuant to federal case law and the *Leer* settlement agreement, as the § 760 expenses are already included in the overall non-chargeable percentage of agency fees rebated to fee payers who object or challenge.

3. WEA may release and deposit into its general fund 70 per cent of agency fees paid to and for WEA during fiscal year 2000 – 2001 and which have been held in escrow; the remaining 30 per cent shall be retained in escrow until a final resolution is reached in the matter of *Davenport v. WEA*, Thurston County Superior Court Cause No. 01-2-00519-4. If damages must be paid to plaintiffs by WEA in *Davenport*, then the escrowed amount may be used for those damages. If defendant is not liable to plaintiffs in *Davenport* for agency fees collected in WEA fiscal year 2000 – 2001, then this matter may be brought on by the parties for further consideration by this Court before the remaining escrowed funds are released by WEA.

IT IS HERBY FURTHER ORDERED that:

A. This Injunction shall take effect immediately and remain in effect permanently, except that, in the event the Washington State Public Disclosure Commission promulgates and puts into effect administrative rules that impose measures in conflict with this Injunction, or any valid initiative or legislation is passed, then any provision of this Injunction that is in conflict with the administrative rules and/or statutes shall be void, but the provisions of this Injunction not in conflict shall remain in full force and effect.

B. Nothing herein shall be construed to waive or foreclose any challenge that might otherwise be made to rulings and findings made by this Court at any stage in these proceedings, and any provisions of this Injunction dependent upon such rulings and findings.

C. Compliance with this injunction and any statutes or PDC rules that may be promulgated that affect this injunction pursuant to Paragraph A, above, shall constitute compliance with RCW 42.17.760.

D. This Court shall retain jurisdiction of this matter for enforcement of this Injunction, and, in the event an action is brought to assert a violation of this Injunction, the prevailing party shall be entitled to reasonable attorney fees and costs for the challenge.

DONE IN OPEN COURT this *3rd* day of *Dec*, 2001.

//s//

JUDGE GARY R. TABOR

Presented, without waiver of objections, by:

CHRISTINE O GREGOIRE
Attorney General

//s//
D. THOMAS WENDEL, WSBA #15445
Assistant Attorney General
Attorneys for Plaintiff

APPROVED AS TO FORM; NOTICE OF PRESENTATION WAIVED:

//s//
Harriet Strasberg, WSBA #15890
Attorneys for Defendant

Exhibit 1

Category Code Descriptions

Chargeable Activities

(If uncertain, err toward categorizing as nonchargeable.)

Code	Description
10.	Activities related to collective bargaining, contract administration and enforcement, including grievance processing and arbitration, working conditions, employee rights and job security, and research related to any chargeable activity.
11.	Preparation for strikes and activities undertaken in connection with lawful strikes.
23.	Revitalizing locals and members; maintenance of membership; organizational development. Does not include activeities that serve only the purpose of recruiting new members, persuading existing members to retain their association

Allocated Activities

Code	Description
61.	Leaves, holidays, office closures.
62.	Staff meetings.
63.	General office work, trainings or meetings that cannot readily be separated into chargeable and nonchargeable components.

Nonchargeable Activities

Code	Description
90.	Lobbying, including lobbying state agencies and grass roots lobbying.
91.	Internal member communications supporting or opposing election campaigns or to influence an election.

Category Code Descriptions	
Chargeable Activities	**Nonchargeable Activities**
membership, or organizing nonmember employees. 24. Instructional and professional development. 25. Association conventions and governance meetings. 26. Training and meetings related to chargeable activities. If a portion of an otherwise chargeable training or meeting is devoted to nonchargeable matters, separate out the nonchargeable time and put it in Code 96, or if separation is not feasible, put the entire training or meeting in Code 63. 32. Communicating information to members or fee payers related to any chargeable activity.	92. Internal member communications regarding other nonchargeable activities. 93. External political activeties supporting or opposing a particular candidate or party or initiative; external activities related to levies, or bond elections; activities related to the operation of a political committee. 94. Voter registration. 95. General office work not related to chargeable activities and other support of non-chargeable activities. 96. Additional nonchargeable activities: • Donations • Ideological or other activities related to

Category Code Descriptions	
Chargeable Activities	**Nonchargeable Activities**
33. Activities supporting chargeable activities or needed to maintain Association as an entity. 34. Scholarships and awards (if available to fee payers or their children). 35. General office work related to chargeable activities. See instructions for Code 26.	state or federal policy. • Meetings and trainings (or portions thereof) not related to chargeable activities; • External public relations; • Litigation or research not related to Association's duty as exclusive bargaining agent or organizational maintenance. • Organizing and recruiting non-members, and administrative or legal proceedings related to same; unit clarifications or representation elections; defending against efforts by other unions to represent units now represented by the Association. • Activities related to unlawful strikes. Put preparation for strikes, whether lawful or unlawful, in category 11. • Insurance protection and other member benefits not available to agency fee payers. • Student WEA, WEA-R.